

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

STATE OF WASHINGTON; STATE OF CALIFORNIA; STATE OF COLORADO; STATE OF CONNECTICUT; STATE OF DELAWARE; DISTRICT OF COLUMBIA; STATE OF HAWAII; STATE OF ILLINOIS; STATE OF MAINE; STATE OF MARYLAND; COMMONWEALTH OF MASSACHUSETTS; STATE OF MICHIGAN; STATE OF MINNESOTA; STATE OF NEW JERSEY; STATE OF NEW YORK; STATE OF NORTH CAROLINA; STATE OF OREGON; COMMONWEALTH OF PENNSYLVANIA; STATE OF RHODE ISLAND; STATE OF VERMONT; and COMMONWEALTH OF VIRGINIA,

NO.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs,

V.

UNITED STATES DEPARTMENT OF STATE; MICHAEL R. POMPEO, in his official capacity as Secretary of State; DIRECTORATE OF DEFENSE TRADE CONTROLS; MIKE MILLER, in his official capacity as Acting Deputy Assistant Secretary of Defense Trade Controls; SARAH HEIDEMA, in her official capacity as Director of Policy, Office of Defense Trade Controls Policy; UNITED STATES DEPARTMENT OF COMMERCE; WILBUR L. ROSS, in his

COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF

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1 official capacity as Secretary of Commerce;
2 BUREAU OF INDUSTRY AND SECURITY;
3 NAZAK NIKAKHTAR, in her official
4 capacity as Assistant Secretary for Industry and
Analysis, performing the non-exclusive duties
of the Under Secretary for Industry and
Security; RICH ASHOOH, in his official
5 capacity as Assistant Secretary of Commerce
for Export Administration,
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7 Defendants.
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1 Plaintiffs the State of Washington, State of California, State of Colorado, State of
 2 Connecticut, State of Delaware, District of Columbia, State of Hawaii, State of Illinois, State of
 3 Maine, State of Maryland, Commonwealth of Massachusetts, State of Michigan, State of
 4 Minnesota, State of New Jersey, State of New York, State of North Carolina, State of Oregon,
 5 Commonwealth of Pennsylvania, State of Rhode Island, State of Vermont, and Commonwealth
 6 of Virginia (collectively, the States) bring this lawsuit against Defendants the United States
 7 Department of State, Michael R. Pompeo, the Directorate of Defense Trade Controls, Mike
 8 Miller, and Sarah Heidema (collectively, the “State Department” or “State Department
 9 Defendants”), and the United States Department of Commerce, Wilbur L. Ross, the Bureau of
 10 Industry and Security, Nazak Nikakhtar, and Rich Ashooh (collectively, the “Commerce
 11 Department” or “Commerce Department Defendants”).

12 **I. INTRODUCTION**

13 1. This case addresses the renewed threat that downloadable guns, in the form of
 14 software or technology for the production of a firearm or firearm parts—such as Computer Aided
 15 Design (CAD) or similar files for the automated production of firearms using a 3D printer¹—
 16 will proliferate worldwide through global export and publication on the internet. 3D-printed guns
 17 are functional weapons that are often undetectable by standard metal detectors because they are
 18 made out of material other than metal (e.g., plastic) and untraceable because they contain no
 19 serial numbers. Anyone with access to such files and a commercially available 3D printer could
 20 readily manufacture, possess, or transfer such a weapon—even those persons statutorily
 21 ineligible to possess firearms, such as violent felons, the mentally ill, and persons subject to
 22 protection and no-contact orders. As the federal government currently recognizes, the global
 23 dissemination of software and technology for the production of such weapons presents a “grave
 24 concern for the United States.” Control of Firearms, Guns, Ammunition and Related Articles the

25
 26 ¹ 3D printing refers to technology that allows a person to make a three dimensional product using a digital
 file or software in conjunction with a printer that is directed by the software. *See, e.g.*, <https://3dprinting.com/what-is-3d-printing/> (last visited December 4, 2019).

1 President Determines No Longer Warrant Control Under the United States Munitions List
 2 (USML), 84 Fed. Reg. 4136 (Jan. 23, 2020) (Commerce Final Rule).

3 2. Despite this acknowledgement, the federal government has published two final
 4 agency rules that will remove technical data related to 3D-printed firearms, including software
 5 and technology for the production of a firearm or firearm parts (“Firearm Files”) from the U.S.
 6 Munitions List (USML). The Arms Export Control Act (AECA) makes Munitions List items
 7 subject to federal export control and specifies how items can be removed from the Munitions
 8 List. 22 U.S.C. § 2778(a)(1), (a)(2), (f). Currently, Firearm Files are included on the Munitions
 9 List and subject to export control pursuant to AECA and the International Traffic in Arms
 10 Regulations (ITAR), which are administered by the Directorate of Defense Trade Controls
 11 (Directorate) within the State Department. The two Final Rules at issue—promulgated by the
 12 State and Commerce Departments, respectively, absent compliance with notice-and-comment
 13 requirements under the Administrative Procedure Act (APA)—will remove Firearm Files from
 14 the Munitions List and nominally transfer them to the Commerce Department’s jurisdiction,
 15 where they will be exempt from any meaningful regulation and no longer subject to direct
 16 Congressional oversight. The Final Rules are scheduled to go into effect on March 9, 2020.

17 3. If the Final Rules go into effect, Firearm Files will instantly become easily
 18 accessible both within the United States—including within the Plaintiff States’ borders—and
 19 outside the United States. Such files can enable anyone with access to a commercially available
 20 3D printer (or one that is free for public use) to automatically manufacture a working firearm
 21 out of plastic. Such undetectable weapons are illegal under the Undetectable Firearms Act, 18
 22 U.S.C. § 922(g), as the federal government has repeatedly recognized. Yet the federal
 23 government’s own actions will make these illegal weapons widely available, undermining its
 24 ability to enforce its own law. This will seriously compromise security in locations that rely on
 25 standard metal detectors, such as schools, courthouses, stadiums, concert halls, prisons, and
 26 airports. It will also impede law enforcement efforts to track and trace weapons used to commit

1 crimes, as homemade firearms (whether plastic or metal) lack manufacturers' serial numbers.
 2 The Final Rules' deregulation of Firearm Files will make it far easier for individuals ineligible
 3 to possess firearms under state or federal law to obtain a deadly weapon without undergoing a
 4 background check.

5 4. The State Department has already attempted to deregulate 3D-printed gun
 6 technology once without observing procedural safeguards designed to guard against abuses of
 7 power by unelected federal agencies. Its actions were vacated and set aside by this Court in
 8 November 2019. *Washington, et al. v. U.S. Dep't of State, et al.*, No. C18-1115RSL, 2019 WL
 9 5892505 (W.D. Wash. Nov. 12, 2019). As the Court explained:

10 Congress granted the President and his designees the discretion to remove an item
 11 from the USML in light of certain considerations and factors. Congress directed
 12 the agency to consider how the proliferation of weaponry and related technical
 13 data would impact world peace, national security, and foreign policy. The State
 14 Department essentially concedes that, despite the specified statutory
 15 considerations, it evaluated the export controls on small caliber firearms only
 16 through the prism of whether restricting foreign access would provide the United
 17 States with a military or intelligence advantage. Because the delisting was not
 18 ‘based on consideration of the relevant factors and within the scope of the
 19 authority delegated to the agency by the statute,’ it must be invalidated under the
 20 APA[.]

21 *Id.* at *8.

22 5. The Court found that the State Department's actions were arbitrary and capricious
 23 because, *inter alia*, the State Department failed to “consider how the proliferation of weaponry
 24 and related technical data would impact world peace, national security, and foreign policy,” as
 25 required by AECA. Furthermore, the Department failed to provide a “reasoned explanation” for
 26 reversing *sub silentio* its position as of April 2018 “that 3D-printed weapons posed unique
 27 threats” warranting regulation under AECA. *Washington*, 2019 WL 5892505, at *7–10; *see also* U.S.C. § 2778(a)(1) (AECA’s purpose is to control exports “[i]n furtherance of world peace and
 28 the security and foreign policy of the United States”).

1 6. The Court further found that the State Department violated AECA’s requirement
 2 that Congress receive 30 days’ notice prior to the removal of any item from the Munitions List.
 3 *Washington*, 2019 WL 5892505, at *6–7.

4 7. Now, the federal government acknowledges, as it must, that “maintaining
 5 controls over” the export of Firearm Files is “in the national security and foreign policy interests
 6 of the United States[.]” International Traffic In Arms Regulations: U.S. Munitions List
 7 Categories I, II, and III, 85 Fed. Reg. 3819 (Jan. 23, 2020) (State Final Rule). Nevertheless, the
 8 Final Rules would effectively deregulate Firearm Files—thereby accomplishing what the federal
 9 government was unable to do through a “temporary modification” removing Firearm Files from
 10 the Munitions List with no advance notice. The Final Rules suffer from substantially the same
 11 problems as the earlier deregulatory effort: they were promulgated absent adequate public notice
 12 and an opportunity to comment on the agencies’ actions, they are contrary to AECA, and they
 13 represent an arbitrary and capricious reversal of the State Department’s previous policy of
 14 controlling the export of Firearm Files under AECA for national security and related reasons.
 15 The federal government now purports to re-adopt that previous policy, while taking the position
 16 that the Final Rules adequately address national security and foreign policy concerns by retaining
 17 nominal export control over Firearm Files in certain limited circumstances. But in actuality, the
 18 Final Rules are toothless: they contain significant loopholes that will permit Firearm Files to be
 19 globally disseminated with ease, implicating all of the undisputed safety and security threats the
 20 government has acknowledged.

21 8. On January 23, 2020, the State Department published a Final Rule, effective
 22 March 9, 2020, that—as promised in the same private Settlement Agreement that prompted the
 23 prior “temporary modification”—will permanently remove Firearm Files from the Munitions
 24 List. State Final Rule, 85 Fed. Reg. 3819. The same day, the Commerce Department published
 25 a companion Final Rule, also effective March 9, 2020, that purports to subject the items removed
 26 from the Munitions List (including Firearm Files) to Commerce’s regulatory jurisdiction under

1 its Export Administration Regulations (EAR). Commerce Final Rule, 85 Fed. Reg. 4136. These
 2 Final Rules are the subject of the present lawsuit. True and correct copies of the Final Rules are
 3 submitted as **Attachments 1 and 2** hereto.

4 9. The Final Rules effectively deregulate 3D-printable gun files entirely. Because
 5 the Commerce Department lacks jurisdiction over “published” items, the Final Rules create a
 6 self-executing loophole whereby anyone can automatically divest Commerce of jurisdiction over
 7 Firearm Files simply by disseminating them to members of the U.S. public (which is not
 8 prohibited by federal law). This exception to Commerce’s jurisdiction is broad and significant
 9 because it is so easy to “publish” Firearm Files. Indeed, a private company known as Defense
 10 Distributed has already published some Firearm Files, rendering those files outside Commerce’s
 11 jurisdiction pursuant to the Final Rule. For example, Defense Distributed represented to this
 12 Court that it has disseminated its files domestically to members of the public by mail.

13 10. The Commerce Final Rule acknowledges the “published” exception, and purports
 14 to create an exception to the exception to maintain control of Firearm Files. However, the
 15 exception to the exception is severely limited. Specifically, it purports to retain jurisdiction over:

16 “software” or “technology” for the production of a firearm, or firearm frame or
 17 receiver, controlled under ECCN 0A501, that is made available by posting on the
 18 internet in an electronic format, such as AMF or G-code, and is ready for insertion
 19 into a computer numerically controlled machine tool, additive manufacturing
 20 equipment, or any other equipment that makes use of the “software” or
 21 “technology” to produce the firearm frame or receiver or complete firearm.

22 Commerce Final Rule § 734.7(c).

23 11. The exception to the exception fails to retain meaningful regulatory control over
 24 Firearm Files for a number of reasons, including the following:

25 a. First, it generally allows anyone to export published Firearm Files, with
 26 no restrictions or oversight whatsoever, by any means *other than* “posting on the internet.”² This

² Under existing regulations, an “export” includes not only online posting, but also “sending or taking a defense article out of the United States in any manner” and “transferring technical data to a foreign person in the United States,” among other activities. 22 CFR § 120.17.

1 means Firearm Files can be transmitted *directly* to foreign entities and organizations, including
 2 known terrorist groups or other bad actors. For example, a company like Defense Distributed
 3 could advertise the availability of its Firearm Files on the internet, then email the files to any
 4 foreign individual or organization that requests them (without ever making the files themselves
 5 “available by posting on the internet”).

6 b. Second, once Firearm Files are lawfully exported in this way (thus placing
 7 them beyond U.S. jurisdiction), they can be posted on the internet from *outside* the United
 8 States—thus making them available both outside and inside the United States, with no ability to
 9 claw them back. The universal and permanent availability of Firearm Files on the internet will
 10 cause all the same irreparable harms established in the prior *Washington* litigation.

11 c. Third, the Final Rules only provide for export-control jurisdiction over a
 12 limited subset of Firearm Files: namely, those that are “ready for insertion” into a 3D printer or
 13 similar device. But Commerce will lack jurisdiction over files that can be easily *converted* to a
 14 readable format using readily available 3D-printing software. Such convertible files could be
 15 posted on the internet from inside the United States, without any direct transfer to a foreign
 16 individual or organization.

17 These and other glaring loopholes in the Commerce Final Rule are discussed further below.

18 12. In addition, the Final Rules violate fundamental APA procedural requirements.
 19 Though the Final Rules were ostensibly promulgated in accordance with a notice-and-comment
 20 rulemaking process, this process occurred *after* the federal government decided to deregulate
 21 Firearm Files pursuant to a Settlement Agreement with Defense Distributed. Defense
 22 Distributed’s stated objective is to ensure global, unrestricted access to firearms by posting
 23 Firearm Files online so that virtually everyone will have access to a “downloadable gun.” The
 24 Final Rules fulfill the promise in the Settlement Agreement to “fully pursue” a “final rule to
 25 remove the files at issue from ITAR jurisdiction.” The Settlement Agreement was reached before
 26 the State and Commerce Departments had even published their Notices of Proposed Rulemaking

1 (NPRMs) in the Federal Register, much less had the opportunity to consider any public
 2 comments. Indeed, this Court found that public comments opposing the removal of Firearm Files
 3 from the Munitions List “were not considered by the agency when it issued the temporary
 4 modification and [related] letter.” *Washington*, 2019 WL 5892505, at *3.

5 13. Moreover, the NPRMs do not mention 3D-printed firearms at all. *See* 83 Fed.
 6 Reg. 24,198 (May 24, 2018) (State NPRM); 83 Fed. Reg. 24,166 (May 24, 2018) (Commerce
 7 NPRM). One must read between the lines of the 2018 NPRMs to understand that in combined
 8 effect, the proposed rules would permanently deregulate 3D-printable firearm files. As such, the
 9 NPRMs failed to provide adequate notice to the public that the proposed jurisdictional transfer
 10 would affect not only items that are “widely available” for commercial sale, as the NPRMs claim,
 11 but would also effectively deregulate Firearm Files that enable virtually anyone to automatically
 12 manufacture illegal firearms that are undetectable and untraceable, and authorize their global
 13 dissemination. In fact, the Commerce NPRM misleadingly claims that “[t]his proposed rule does
 14 not deregulate the transferred items.”

15 14. The Commerce Final Rule’s exception to the exception purporting to retain
 16 export jurisdiction over certain published Firearm Files likewise was not included in the NPRM,
 17 depriving the public of an opportunity to comment on the significant problems with that
 18 regulatory regime (including those discussed in Paragraph 11, *supra*). Thus, even though some
 19 commenters discussed the proposed rules’ implications for 3D-printed guns in general, they had
 20 no opportunity to comment on the problems with the specific provisions revealed for the first
 21 time in the Commerce Final Rule. Tellingly, the Final Rules do not address the glaring problems
 22 with these specific provisions identified above, or any other issues with those provisions—
 23 because commenters had no opportunity to raise them.

24 15. If the Final Rules go into effect, they will permit Defense Distributed and others
 25 to export Firearm Files anywhere, to anyone. As a direct result, such files will inevitably be
 26 published on the internet, making downloadable guns available to anyone with access to a 3D

1 printer inside or outside the United States. That is exactly the result this Court previously issued
 2 an injunction to prevent, and that the federal government now purportedly wishes to avoid.

3 16. Not only do the Final Rules deregulate the files Defense Distributed currently has
 4 in its possession, but they also deregulate Firearm Files categorically, including files for the
 5 automatic manufacture of more technologically advanced weapons that may be developed in the
 6 future. The Commerce Department will lack the flexibility to address such new technology on
 7 an *ad hoc* basis because, under its own regulations, it lacks export-control jurisdiction once such
 8 technology is “published.”

9 17. The Final Rules violate the APA, including for the following reasons:

10 a. The Final Rules are procedurally improper because the public did not
 11 receive adequate notice or an opportunity to comment on them, and they are not a logical
 12 outgrowth of the agency’s rulemaking process.

13 b. Defendants violated AECA by taking action contrary to the statute’s
 14 stated purpose of regulating exports “[i]n furtherance of world peace and the security and foreign
 15 policy of the United States[.]” 22 U.S.C. § 2778(a)(1). Removing Firearm Files from the
 16 Munitions List (and transferring jurisdiction to an agency that lacks any meaningful ability to
 17 regulate them) actively frustrates this purpose by facilitating the global proliferation of uniquely
 18 dangerous weapons, as the administrative record shows.

19 c. The Final Rules are the product of arbitrary and capricious rulemaking
 20 and abuse of agency discretion. The State and Commerce Departments acted arbitrarily and
 21 capriciously by *inter alia* (i) failing to meaningfully consider the factors Congress identified as
 22 relevant to whether an item should remain on the Munitions List, including impacts on world
 23 peace, national security, and foreign policy; (ii) drastically changing long-established practice
 24 and policy regarding export control of Firearm Files, while failing to give due consideration to
 25 the Final Rules’ real-world implications in light of acknowledged issues related to safety and
 26 security; and (iii) promulgating Final Rules that have a significant impact on the public pursuant

1 to a private settlement agreement, while treating the APA's notice-and-comment procedure as a
 2 *pro forma* exercise rather than an important information-gathering step that should *precede* an
 3 agency decision.

4 18. Defendants' unlawful actions—if allowed to stand—will lead to the proliferation
 5 of downloadable guns overseas and domestically, threatening our national security. The
 6 proliferation of untraceable and undetectable weapons within the United States threatens to
 7 cripple the various States' extensive and comprehensive systems of firearms regulations
 8 designed to keep guns out of the wrong hands.

9 19. For these reasons and others detailed below, Defendants violated the APA by
 10 promulgating Final Rules that are procedurally defective, contrary to law, and arbitrary and
 11 capricious. Pursuant to 5 U.S.C. § 706, the Plaintiff States ask the Court to enjoin, vacate, and
 12 set aside the Final Rules.

13 **II. JURISDICTION AND VENUE**

14 20. This Court has jurisdiction over this matter and the parties hereto pursuant to
 15 28 U.S.C. §§ 1331, 2201, and 2202.

16 21. Venue in this Court is proper pursuant to 28 U.S.C. § 1391(e) because Plaintiff
 17 the State of Washington is located here and a substantial part of the events or omissions giving
 18 rise to the claim occurred or will imminently occur here. In particular, the dissemination of the
 19 Firearm Files in question will have an adverse impact on the public safety in the City of Seattle
 20 and King County, Washington, which are located in this district.

21 **III. PARTIES**

22 22. The Plaintiff States, represented by and through their respective Attorneys
 23 General, are sovereign states of the United States of America. The security of the Plaintiff States
 24 is threatened by Defendants' deregulation of Firearm Files via the Final Rules. The States bring
 25 this action to redress harms to their sovereign authority, quasi-sovereign authority, proprietary
 26 interests, and interests as *parens patriae*.

1 23. The States have sovereign and quasi-sovereign interests in protecting the security
 2 and well-being of their residents. “The States . . . perform many of the vital functions of modern
 3 government—punishing street crime, running public schools, and zoning property for
 4 development, to name but a few—even though the Constitution’s text does not authorize any
 5 government to do so. Our cases refer to this general power of governing, possessed by the States
 6 but not by the Federal Government, as the ‘police power.’” *Nat’l Fed’n of Indep. Bus. v. Sebelius*,
 7 567 U.S. 519, 535–36 (2012). Ensuring the safety of their residents from untraceable,
 8 undetectable weapons is one of the police powers of the States.

9 24. Defendants’ planned deregulation of Firearm Files harms the States’ sovereign
 10 interests by seriously jeopardizing the States’ ability to enforce their public safety laws,
 11 including those regulating who may possess firearms; what type of firearms and weapons they
 12 may possess; the manner in which firearms may be used; and the purchase and sale of firearms,
 13 including tracking serial numbers and ownership information. In addition, the imminent
 14 widespread availability of undetectable and untraceable weapons will make it far more difficult
 15 for the States to protect the safety of those within their borders, including through effective law
 16 enforcement measures that depend on the ability to track and forensically identify weapons, and
 17 the use of metal detectors in government buildings and other public places.

18 25. The States have proprietary interests in their treasuries, the integrity of their
 19 borders, the safety of their jails and prisons, and the efficient performance of the work of their
 20 employees and officials. Defendants’ actions harm these interests. Defendants’ actions harm the
 21 States by making it far easier to bring undetectable and untraceable firearms across their borders.
 22 Their actions threaten state and county prison safety by facilitating the smuggling of undetectable
 23 weapons into prisons and jails. Their actions make the States’ state, county, and local detective
 24 work solving crimes more difficult by increasing access to untraceable and undetectable guns.
 25 Defendants’ actions also impede the States’ executive protection responsibilities. Further, the
 26 States—and border states like Washington in particular—spend substantial sums of state

1 taxpayer money to protect their residents from terrorist attacks. Defendants' actions to deregulate
 2 Firearm Files enhance the risk of terrorist attacks. Indeed, the federal government currently
 3 acknowledges that “[i]n the absence of controls on the export, reexport, or in-country transfer of
 4 such technology and software, such items could be easily used in the proliferation of
 5 conventional weapons, the acquisition of destabilizing numbers of such weapons, or for acts of
 6 terrorism.” Commerce Final Rule, 85 Fed. Reg. 4136.

7 26. Defendant the United States Department of State (State Department) is the
 8 executive agency of the United States government responsible for administering and enforcing
 9 the ITAR under the authority of AECA. The State Department is a party to the Settlement
 10 Agreement with Defense Distributed. The State Department promulgated the State Final Rule
 11 challenged in this suit.

12 27. Defendant Michael R. Pompeo is sued in his official capacity as the Secretary of
 13 State. In this capacity, he is responsible for the operation and management of the State
 14 Department, including the operation and management of the Directorate of Defense Trade
 15 Controls and administration and enforcement of the ITAR. The Secretary of State is a party to
 16 the Settlement Agreement with Defense Distributed.

17 28. Defendant Directorate of Defense Trade Controls is a subordinate unit within the
 18 Department of State Bureau of Political and Military Affairs responsible for administering and
 19 enforcing the ITAR. The Directorate enacted the Temporary Modification and issued the Letter
 20 previously invalidated by this Court, and is a party to the Settlement Agreement with Defense
 21 Distributed.

22 29. Defendant Mike Miller is sued in his official capacity as the Acting Deputy
 23 Assistant Secretary of Defense Trade Controls. The Acting Deputy Assistant Secretary is a party
 24 to the Settlement Agreement with Defense Distributed.

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 26

30. Defendant Sarah Heidema is sued in her official capacity as the Director, Office of Defense Trade Controls Policy. The Director, Office of Defense Trade Controls Policy is a party to the Settlement Agreement with Defense Distributed.

31. Defendant the United States Department of Commerce (Commerce Department) is the executive agency of the United States government responsible for administering and enforcing the Export Administration Regulations (EAR) under the Export Control Reform Act (ECRA) and related statutes.

32. Defendant Wilbur L. Ross is sued in his official capacity as the Secretary of Commerce. In this capacity, he is responsible for the operation and management of the Commerce Department, including the operation and management of the Bureau of Industry and Security (BIS) and administration and enforcement of the EAR.

33. Defendant BIS is a subordinate unit within the Commerce Department responsible for administering and enforcing the EAR. BIS promulgated the Commerce Final Rule challenged in this suit.

34. Defendant Nazak Nikakhtar is sued in his official capacity as Assistant Secretary for Industry and Analysis, performing the non-exclusive duties of the Under Secretary for Industry and Security.

35. Defendant Rich Ashooch is sued in his official capacity as Assistant Secretary of Commerce for Export Administration.

IV. ALLEGATIONS

A. The Statutory and Regulatory Framework

1. State Department: AECA, ITAR, and the Munitions List

36. The Arms Export Control Act authorizes the President, “[i]n furtherance of world peace and the security and foreign policy of the United States . . . to control the import and the export of defense articles and defense services.” 22 U.S.C. § 2778(a)(1). A central purpose of AECA is to reduce the international trade in arms and avoid destabilizing effects abroad through

1 arms exports. Specifically, AECA provides: “It shall be the policy of the United States to exert
 2 leadership in the world community to bring about arrangements for reducing the international
 3 trade in implements of war and to lessen the danger of outbreak of regional conflict and the
 4 burdens of armaments.” 22 U.S.C. § 2751. “United States programs for or procedures governing
 5 the export, sale, and grant of defense articles and defense services . . . shall be administered in a
 6 manner which will carry out this policy.” *Id.* The approach must be to “maintain adherence to a
 7 policy of restraint in conventional arms transfers,” and Congress directed that “full regard”
 8 should be “given to the security interests of the United States in all regions of the world and that
 9 particular attention should be paid to controlling the flow of conventional arms to the nations of
 10 the developing world.” *Id.*

11 37. Under AECA, “[t]he President is authorized to designate those items which shall
 12 be considered as defense articles and defense services for the purposes of this section and to
 13 promulgate regulations for the import and export of such articles and services.” 22 U.S.C.
 14 § 2778(a)(1). Items designated as defense articles or services constitute the U.S. Munitions List.
 15 *Id.* at § 2778(a)(1). Category I of the Munitions List includes articles, services, and related
 16 technical data for “Firearms, Close Assault Weapons and Combat Shotguns.”

17 38. Among other things, Category I of the Munitions List currently (prior to the Final
 18 Rules’ effective date) includes all firearms up to .50 caliber, and all technical data directly related
 19 to such firearms. *See* 22 C.F.R. § 121.1(I)(a) and (i). “Technical data” is information that “is
 20 required for the design, development, production, manufacture, assembly, operation, repair,
 21 testing, maintenance or modification of defense articles.” *Id.* § 120.10(a). Technical data
 22 includes “information in the form of blueprints, drawings, photographs, plans, instructions or
 23 documentation.” *Id.* § 120.10.

24 39. As former Director of the Office of Defense Trade Controls Management Lisa V.
 25 Aguirre stated in a 2015 declaration filed in federal court, “the ‘technical data’ provisions serve
 26 the purpose of limiting the export of detailed information needed to manufacture, maintain, or

1 operate defense articles controlled on the USML.” *Defense Distributed v. U.S. Dept. of State*,
 2 15-CV-372 RP, ECF No. 32-1 (Aguirre Decl.) ¶ 14(d). “Such export limitations advance the
 3 purposes of the AECA by limiting the ability of foreign powers to design, develop, and produce
 4 defense articles in lieu of being able to obtain those articles directly. Absent the inclusion of
 5 technical data in the ITAR, the ITAR’s limits on arms transfers would be of negligible practical
 6 effect because the ITAR would leave unregulated the exportation of the fundamental technology,
 7 know-how, blueprints, and other design information sufficient for foreign powers to construct,
 8 produce, manufacture, maintain, and operate the very same equipment regulated in its physical
 9 form by the ITAR.” *Id.*

10 40. Pursuant to Executive Order 13637, the President has delegated his AECA
 11 authority to the State Department. In turn, the State Department promulgated the ITAR, which
 12 are administered by the Directorate. *See* 22 C.F.R. §§ 120-130. Among other things, the
 13 Directorate is tasked with maintaining, reviewing, and clarifying the Munitions List.

14 41. Pursuant to Executive Order 13637, section 1(n), “[d]esignations including
 15 changes in designations, by the Secretary of State of items or categories that shall be considered
 16 as defense articles and defense services subject to export control under section 38 (22 U.S.C.
 17 § 2778) shall have the concurrence of the Secretary of Defense.” When removing an item from
 18 the Munitions List, the Secretary must account for AECA’s objectives: i.e., furthering “world
 19 peace and the security and foreign policy of the United States.” 22 U.S.C. § 2778(a)(1).
 20 Relatedly, “[d]ecisions on issuing export licenses . . . shall take into account whether the export
 21 of an article would . . . support international terrorism, increase the possibility of outbreak or
 22 escalation of conflict, or prejudice the development of bilateral or multilateral arms control or
 23 nonproliferation agreements or other arrangements.” *Id.* § 2778(a)(2).

24 42. In addition, the Executive Branch must give notice to the International Relations
 25 Committee of the House of Representatives and to the Committee on Foreign Relations of the
 26 Senate at least 30 days in advance of removing an item from the Munitions List. 22 U.S.C.

1 § 2778(f)(1). Such notification must be made in accordance with the procedures applicable to
 2 reprogramming notifications under section 634A(a) of the Foreign Assistance Act of 1961, 22
 3 U.S.C. § 2394-1. *Id.*

4 43. For situations where there is doubt that a particular item to be exported falls on
 5 the Munitions List, ITAR contains a commodity jurisdiction (CJ) procedure. 22 C.F.R. § 120.4.
 6 Upon written request, the Directorate will provide a determination as to whether a certain item,
 7 service, or data is within the jurisdiction of ITAR. *Id.*

8 44. As Director Aguirre explained in her 2015 declaration, the CJ determination
 9 “entails consultation among the Departments of State, Defense, Commerce and other U.S.
 10 Government agencies and industry in appropriate cases.” Aguirre Decl. ¶ 19. Assessments are
 11 made on a case-by-case basis, evaluating whether the article is covered by the Munitions List, is
 12 functionally equivalent to an article on the Munitions List, or has substantial military or
 13 intelligence application. A determination made pursuant to the commodity jurisdiction process
 14 takes into account “(i) The form and fit of the article; and (ii) The function and performance
 15 capability of the article.” *Id.* ¶ 20.

16 45. 22 C.F.R. § 120.4(f) requires that “State, Defense and Commerce will resolve
 17 commodity jurisdiction disputes in accordance with established procedures. State shall notify
 18 Defense and Commerce of the initiation and conclusion of each case.”

19 **2. Commerce Department: ECRA, EAR, and the Commerce Control List**

20 46. The Export Control Reform Act, 50 U.S.C. § 4801 *et seq.*, authorizes the
 21 President to regulate the export, reexport,³ and in-country transfer of certain controlled
 22 commodities, software, and technology. *Id.* §§ 4801(7), 4812. A “controlled” item is one subject
 23 to the jurisdiction of the United States. *Id.* § 4801(1).

24
 25
 26 ³ “Reexport” means transmission of an item from one foreign country to another foreign country, or the
 release or transfer of technology to a foreign person outside the United States. 50 U.S.C. § 4801; 15 C.F.R. § 734.14.

1 47. ECRA's purpose is to ensure that export controls are used "only after full
 2 consideration of the impact on the economy of the United States and only to the extent necessary"
 3 to fulfill the "national security," "foreign policy," or "international obligations" of the United
 4 States in certain enumerated respects. *Id.* § 4811.

5 48. The Secretary of Commerce, in consultation with the Secretaries of State,
 6 Defense, and Energy, carries out ECRA on behalf of the President by establishing and
 7 maintaining a list of controlled items, known as the Commerce Control List. 50 U.S.C. § 4813.
 8 ECRA directs the Commerce Secretary to require licenses "as appropriate" for exports,
 9 reexports, and in-country transfers of controlled items. *Id.* § 4813.

10 49. ECRA directs the Commerce Secretary to "establish a procedure to license or
 11 otherwise authorize" such exports pursuant to the statute. *Id.* § 4815(a). The Commerce
 12 Secretary is encouraged to process license applications within 30 days. *Id.* § 4815(b).

13 50. ECRA provides that a Commerce license is required to export controlled items
 14 only in limited circumstances. For instance, a Commerce license is required for exports to
 15 countries which the Secretary of State has determined have "repeatedly provided support for acts
 16 of international terrorism"—and Congress must be notified 30 days prior to the issuance of any
 17 such license—but a license is not categorically required for exports to other countries. *Id.*
 18 § 4813(c). A license is also required to export nuclear explosive devices, missiles, chemical or
 19 biological weapons, whole plants for chemical weapons precursors, and foreign maritime nuclear
 20 projects that would pose a national security or foreign policy risk—but is not categorically
 21 required for other types of items (such as Firearm Files). *Id.* § 4813(d).

22 51. The Commerce Department's Export Administration Regulations (EAR) (15
 23 C.F.R. chapter VII, subchapter C) implement various legal authorities, including ECRA. *See* 15
 24 C.F.R. § 730.2; Commerce Final Rule. Items subject to the EAR "include purely civilian items,
 25 items with both civil and military, terrorism or potential WMD^[4]-related applications, and items

26 ⁴ Weapons of mass destruction. 15 C.F.R. § 730.3.

1 that are exclusively used for military applications but do not warrant control under [ITAR].” *Id.*
 2 § 730.3.

3 52. “Published” technology and software is not subject to the EAR. 15 C.F.R.
 4 §§ 734.3(b)(3), 734.7(a). Thus, when technology or software “has been made available to the
 5 public without restrictions upon its further dissemination,” the Commerce Department lacks
 6 export-control jurisdiction over it. 15 C.F.R. § 734.7(a). Publication may occur through, *inter*
 7 *alia*, distributing the software or technology at a conference or exhibition, making it available at
 8 a library or other public collection that is open to the public, or publicly disseminating it “in any
 9 form,” including but not limited to posting on the internet. *Id.*; *see infra* ¶ 83.

10 53. Consistent with ECRA, a “relatively small percentage of exports and reexports
 11 subject to the EAR” require a Commerce license. 15 C.F.R. § 730.7. “Many items are not on the
 12 Commerce Control List (CCL) . . . , or, if on the CCL, require a license to only a limited number
 13 of countries.” *Id.* “Just because an item or activity is subject to the EAR does not mean that a
 14 license or other requirement automatically applies.” *Id.* § 734.2(a)(3).

15 54. Whether the Commerce Department chooses to require an export license may
 16 depend on various factors enumerated in the EAR, including the item’s destination and whether
 17 there are applicable restrictions on the end-user or end-use of the item. *See* 15 C.F.R. § 736.2.

18 55. License applications are reviewed by the Bureau of Industry and Security (BIS),
 19 a Commerce sub-agency. 15 C.F.R. § 750.3(a). Other departments may also participate in the
 20 review; for example, the State Department may (but may choose not to) review license
 21 applications involving items controlled for national security, regional stability, or anti-terrorism
 22 reasons. *Id.* § 750.3(b). Specific criteria for granting or denying a license application are not
 23 apparent from the applicable regulations. *See id.*

1 **B. Defense Distributed's Firearm Files**

2 56. Defense Distributed is a Texas corporation founded by Cody Wilson, a convicted
 3 sex offender⁵ and self-described “crypto-anarchist” who believes that “governments should live
 4 in fear of their citizenry.” His company’s objective is for everyone in the world to have access
 5 to guns, and to make meaningful gun regulation impossible.

6 57. In or around early May 2013, Defense Distributed posted computer-aided design
 7 (CAD) files on DEFCAD.org, a website it created to serve as an open-source repository for
 8 weapons designs, including software code used to automatically manufacture the “Liberator”
 9 pistol. A 3D printer can create a functional Liberator almost entirely from plastic. Though the
 10 Liberator’s design includes a 6-oz piece of steel, this component is non-functional and can be
 11 easily removed, enabling the Liberator to avoid detection in walk-through metal detectors.

12 58. Defense Distributed described these CAD files as “essentially blueprints that can
 13 be read by CAD software.” As the State Department stated in a court filing in April 2018, these
 14 files are “indispensable to a three-dimensional (‘3D’) printing process used to create firearms
 15 and their components.”⁶ Typically, all a user would need to do is download the CAD files, use
 16 commonly available software to convert and transmit them to a 3D printer, and enter a print
 17 command, in order to create a real, functional weapon within hours or minutes.

18 59. On May 8, 2013, the Directorate’s Office of Defense Trade Controls Compliance,
 19 which is responsible for compliance with and civil enforcement of AECA and ITAR, sent
 20 Defense Distributed a letter noting that “it is unlawful to export any defense article or technical
 21 data for which a license or written approval is required without first obtaining the required
 22 authorization from the [Directorate].” The letter explained that “disclosing (including oral or

23 ⁵ According to news reports, Mr. Wilson was charged with having sex with a minor and pled guilty this
 24 year to injury to a child, which is a felony. He is prohibited from carrying a handgun in public and from buying and
 25 selling weapons at gun stores. Andrew Weber & Alain Stephens, *Despite His Criminal Record, Cody Wilson Is*
Back In The 3D-Printed Gun Business, KUT (Nov. 20, 2019), [https://www.kut.org/post/despite-his-criminal-](https://www.kut.org/post/despite-his-criminal-record-cody-wilson-back-3d-printed-gun-business)
[record-cody-wilson-back-3d-printed-gun-business](https://www.kut.org/post/despite-his-criminal-record-cody-wilson-back-3d-printed-gun-business) (last accessed Dec. 10, 2019).

26 ⁶ Def. Mtn. to Dismiss Second Amended Complaint at 15, *Def. Distributed v. U.S. Dept. of State*,
 15-CV-372 RP (W.D. Texas) (Dkt. # 92).

1 visual disclosure) or transferring technical data to a foreign person, whether in the United States
 2 or abroad, is considered an export under § 120.17 of the ITAR.” It requested that Defense
 3 Distributed remove ten specific CAD files from public access “immediately” and advised that
 4 Defense Distributed could submit a request for CJ determination for the files. Defense
 5 Distributed submitted a CJ determination request on June 21, 2015.

6 60. Separately, Defense Distributed submitted a CJ determination request for the
 7 “Ghost Gunner,” an automated firearms metal milling machine.⁷ In April 2015, the Directorate
 8 determined that the Ghost Gunner machine itself was not subject to ITAR, but that the “project
 9 files and data files for producing a defense article on a 3D printer or similar device constituted
 10 technical data on that defense article that would be subject to ITAR regulation.”

11 61. The Directorate completed its review of Defense Distributed’s original requests
 12 on June 4, 2015, and determined that six of those files were subject to ITAR control: (i) the
 13 Liberator pistol; (ii) the .22 caliber electric pistol; (iii) the 5.56/.223 muzzle brake; (iv) the
 14 Springfield XD- 40 tactical slide assemble; (v) the sub-caliber insert; and (vi) the VZ-58 front
 15 sight.

16 62. In making its CJ determinations, the Directorate noted that the CAD files could
 17 be used to “automatically find, align, and mill” a defense article such as a firearm on a 3D printer
 18 or other manufacturing device, and that manufacturing a defense article in this way requires
 19 considerably less know-how than relying on conventional technical data, which merely *guides*
 20 the manufacture of a defense article and requires additional craftsmanship, know-how, tools, and
 21 materials.

22
 23
 24
 25 ⁷ Unregistered homemade weapons—known as “ghost guns”—have been used in several recent shootings.
 26 See, e.g., Andrew Blankstein & Phil Helsel, *Student who opened fire at California high school, killing 2, used “ghost gun,”* NBC NEWS (Nov. 21, 2019), <https://www.nbcnews.com/news/us-news/student-who-opened-fire-california-high-school-killing-2-used-n1089411> (last accessed Dec. 10, 2019).

1 **C. Defense Distributed's Lawsuit against the Federal Government**

2 63. In May 2015, Defense Distributed sued the federal government in a Texas federal
 3 district court, seeking an injunction to prevent the government from regulating Defense
 4 Distributed's dissemination of the CAD files. *Def. Distributed v. U.S. Dept. of State*,
 5 15-CV-372 RP (W.D. Texas).

6 64. In defending against that lawsuit, the federal government stated it was
 7 “particularly concerned that [the] proposed export of undetectable firearms technology could be
 8 used in an assassination, for the manufacture of spare parts by embargoed nations, terrorist
 9 groups, or to compromise aviation security overseas in a manner specifically directed at U.S.
 10 persons.” As the government explained, the CAD files “are ‘technical data’ that are regulated by
 11 the ITAR because, absent such regulation, providing the CAD designs to a foreign person or
 12 foreign government would be equivalent to providing the defense article itself, enabling the
 13 complete circumvention of ITAR’s export regulations.”

14 65. Along with its opposition to Defense Distributed’s preliminary injunction motion,
 15 the government submitted an affidavit from Lisa V. Aguirre, who was then the Director of the
 16 Office of Defense Trade Controls Management. Among other things, Director Aguirre stated
 17 that: (i) “[t]he ‘Liberator’ firearm included in DD’s CAD designs presents a specific and unique
 18 risk to the national security and foreign policy interests of the United States”; (ii) making the
 19 CAD files available online would provide terrorist organizations with firearms, which could be
 20 used against the United States or its allies; and (iii) “[a]ccess to weapons technology coupled
 21 with the uncontrolled and increasingly ubiquitous means of production . . . could contribute to
 22 armed conflict, terrorist or criminal acts, and seriously undermine global export control and non-
 23 proliferation regimes designed to prevent the dangerous and destabilizing spread and
 24 accumulation of weapons and related technologies.” Aguirre Decl. ¶ 35(c).

25 66. The Honorable Robert L. Pitman denied Defense Distributed’s motion for a
 26 preliminary injunction, noting that Defense Distributed’s avowed purpose is to facilitate “global

1 access to, and the collaborative production of, information and knowledge related to the three-
 2 dimensional ('3D') printing of arms," and that such activities "undoubtedly increase[] the
 3 possibility of outbreak or escalation of conflict" and are of the type Congress authorized the
 4 President to regulate through AECA. *Def. Distributed v. U.S. Dep't of State*, 121 F. Supp. 3d
 5 680, 691 (W.D. Tex. 2015) (emphasis in original). The Fifth Circuit affirmed, finding that "the
 6 State Department's stated interest in preventing foreign nationals—including all manner of
 7 enemies of this country—from obtaining technical data on how to produce weapons and weapon
 8 parts" constitutes "a very strong public interest in national defense and national security." *Def.*
 9 *Distributed v. U.S. Dep't of State*, 838 F.3d 451, 458 (5th Cir. 2016). As the Fifth Circuit stated:

10 Even if Plaintiffs—Appellants eventually fail to obtain a permanent injunction, the
 11 files posted in the interim [if a preliminary injunction issued] would remain online
 12 essentially forever, hosted by foreign websites such as the Pirate Bay and freely
 13 available worldwide . . . ***Because those files would never go away***, a preliminary
 14 injunction would function, in effect, as a permanent injunction as to all files
 15 released in the interim. ***Thus, the national defense and national security interest
 16 would be harmed forever.***

17 *Id.* at 460 (5th Cir. 2016) (emphasis added).

18 67. On January 8, 2018, the Supreme Court denied Defense Distributed's petition for
 19 a writ of certiorari. *Def. Distributed v. Dep't of State*, 138 S. Ct. 638 (2018).

20 68. After the district court lifted the stay of proceedings that had been imposed
 21 pending the above-referenced appeals, the federal government in April 2018 moved to dismiss
 22 Defense Distributed's complaint, arguing that the CAD files at issue "can unquestionably
 23 facilitate the creation of defense articles abroad" and that "the Department of State has
 24 consistently and reasonably concluded that it is not possible to meaningfully curtail the overseas
 25 dissemination of arms if unfettered access to technical data essential to the production of those
 26 arms is permitted."⁸ If the government were not permitted to regulate the dissemination of the

⁸ Def. Mtn. to Dismiss Second Amended Complaint at 15, *Def. Distributed v. U.S. Dept. of State*, 15-CV-372 RP (W.D. Texas) (Dkt. # 92).

1 CAD files, it argued, they could be “easily used overseas to make firearms that are subject to
 2 U.S. export controls,” where, “beyond the reach of U.S. law, they could be used to threaten U.S.
 3 national security, U.S. foreign policy interests, or international peace and stability.”

4 **D. The Government’s Settlement Agreement with Defense Distributed**

5 69. Mere weeks after the federal government moved to dismiss, Wilson and Defense
 6 Distributed abruptly announced that their case had settled. On July 27, 2018, the parties filed a
 7 stipulation of dismissal with prejudice.

8 70. The Settlement Agreement was apparently finalized in April 2018, but was not
 9 executed by the parties until June 29, 2018.

10 71. Pursuant to Paragraph 1 of the Settlement Agreement, the State Department
 11 Defendants committed to:

12 a. “draft and . . . fully pursue, to the extent authorized by law (including the
 13 Administrative Procedure Act), the publication in the Federal Register of a notice of proposed
 14 rulemaking and final rule, revising USML Category I to exclude the technical data that is the
 15 subject of the [Defense Distributed] Action”;

16 b. “announce[], while the above-referenced final rule is in development,
 17 . . . a temporary modification, consistent with [ITAR], of USML Category I to exclude the
 18 technical data that is the subject of the Action . . . on or before July 27, 2018”;

19 c. “issu[e] . . . a letter to Plaintiffs on or before July 27, 2018, signed by the
 20 Deputy Assistant Secretary for Defense Trade Controls, advising that the Published Files, Ghost
 21 Gunner Files, and CAD Files⁹ are approved for public release (i.e., unlimited distribution) in any
 22 form and are exempt from the export licensing requirements of the ITAR”; and

23 9 These terms are defined as follows, by reference to Defense Distributed’s complaint:

24

- 25 • “Published Files”: “technical information regarding a number of gun-related items, including a
 trigger guard, grips, two receivers, a magazine for AR-15 rifles, and a handgun”;
- 26 • “Ghost Gunner Files”: “files containing technical information on a machine, named the “Ghost
 Gunner,” that can be used to manufacture a variety of items, including gun parts”;
- “CAD Files”: files which Defense Distributed has made requests to the Department of Defense
 Office of Prepublication Review and Security for prepublication review since September 2, 2014.

d. “acknowledge[] and agree[] that the temporary modification of USML Category I permits any United States person . . . to access, discuss, use, reproduce, or otherwise benefit from the technical data that is the subject of the Action, and that the letter to Plaintiffs permits any such person to access, discuss, use, reproduce or otherwise benefit from the Published Files, Ghost Gunner Files, and CAD Files.”

72. In the Settlement Agreement, the government seemingly consented to the dissemination of Firearm Files it never reviewed or evaluated for safety, national security, or other concerns. Paragraphs 1(a), (b), and (d) of the Settlement Agreement authorize the publication of “the technical data that is the subject of the Action,” which is defined to include “Other Files,” i.e., those that “Defense Distributed has and will continue to create and possess . . . that contain technical information, to include design drawings, rendered images, written manufacturing instructions.”

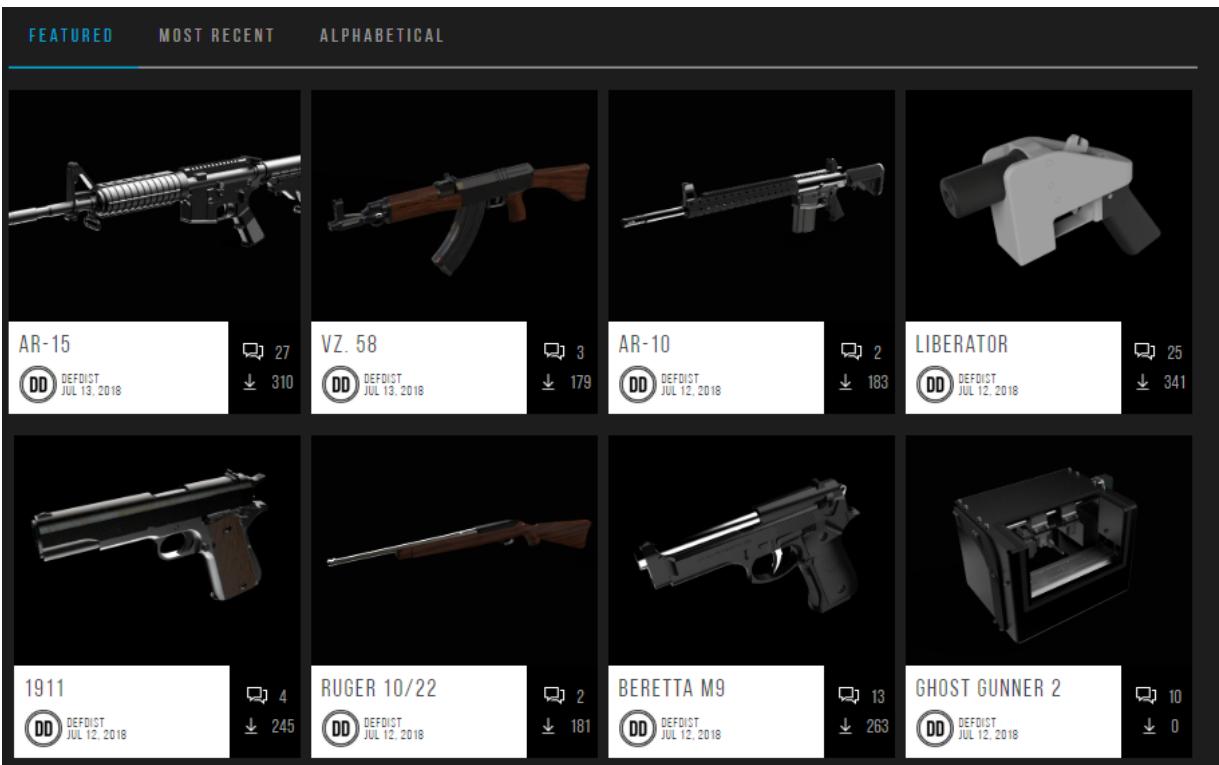
73. There is no indication in the Settlement Agreement (or elsewhere) that the State Department undertook any analysis, study or determination, in consultation with other agencies or otherwise, before agreeing to remove the subject files from the Munitions List. In fact, the Settlement Agreement states that it does not “reflect any agreed-upon purpose other than the desire of the Parties to reach a full and final conclusion of the Action, and to resolve the Action without the time and expense of further litigation.”

74. Neither the House Committee on Foreign Relations nor the Senate Committee on Foreign Relations received the required 30 days' advance notice of the Temporary Modification referenced in Paragraphs 1(b) or (d) or the Letter referenced in Paragraph 1(c) of the Settlement Agreement. The Temporary Modification and Letter went into effect on July 27, 2018, without providing any such notice to Congress.

75. After the Settlement Agreement became public, Cody Wilson and Defense Distributed repeatedly and adamantly claimed that the Temporary Modification and Letter would effectively negate all gun violence prevention efforts. Among other things, Wilson tweeted a

1 photo of a tombstone announcing the death of “gun control,” and stated: “All this Parkland stuff,
 2 the students,^[10] all these dreams of ‘common sense gun reforms’? No. The internet will serve
 3 guns . . . No amount of petitions or die-ins or anything else can change that.”

4 76. Defense Distributed began advertising that its CAD files—including those for the
 5 “Liberator” pistol—would soon become public:



18 Source: <https://defcad.com> (accessed July 28, 2018).

19 77. According to news reports at the time,¹¹ Defense Distributed’s repository of
 20 downloadable-gun files was to also include “more exotic DIY semi-automatic weapons.” “The
 21 relaunched site will be open to user contributions, too; Wilson hopes it will soon serve as a
 22 searchable, user-generated database of practically any firearm imaginable.” According to
 23

24 ¹⁰ On February 14, 2018, a gunman killed 17 people at Marjory Stoneman Douglas High School in
 25 Parkland, Florida. Students who survived the shooting gained national attention in advocating for legislative action
 on gun violence.

26 ¹¹ Andy Greenberg, *A Landmark Legal Shift Opens Pandora’s Box for DIY Guns*, WIRED (July 18, 2018),
<https://www.wired.com/story/a-landmark-legal-shift-opens-pandoras-box-for-diy-guns/>.

1 Wilson: “What’s about to happen is a Cambrian explosion of the digital content related to
 2 firearms.”

3 78. Though the Temporary Modification and Letter were ultimately enjoined and
 4 invalidated, as discussed below, Defense Distributed has disseminated at least some of its
 5 Firearm Files domestically to members of the public by mail. *See Washington*, 2019 WL
 6 5892505, Dkt. # 155 (Pvt. Defs’ Resp. to Mot. to Compel) at 3 (“Defense Distributed distributed
 7 the Subject Files via United States Postal Service mail.”).

8 **E. The Government’s Actions in Accordance with the Settlement Agreement**

9 **1. The Proposed Rules (which do not mention 3D-printed guns)**

10 79. Without notifying Congress or the public about the Defense Distributed
 11 Settlement Agreement, or revealing that 3D-printed guns would be implicated by forthcoming
 12 agency rules, the federal government surreptitiously moved forward with deregulating these
 13 weapons.

14 80. On May 24, 2018, as promised, the federal government published two notices of
 15 proposed rulemaking by the State and Commerce Departments, which would remove all
 16 Category I items from the Munitions List and transfer them to Commerce’s jurisdiction. *See*
 17 *International Traffic in Arms Regulations: U.S. Munitions List Categories I, II, and III*, 83 Fed.
 18 Reg. 24,198 (May 24, 2018) (State NPRM); *Control of Firearms, Guns, Ammunition and*
 19 *Related Articles the President Determines No Longer Warrant Control Under the United States*
 20 *Munitions List (USML)*, 83 Fed. Reg. 24,166 (May 24, 2018) (Commerce NPRM).

21 81. According to the State NPRM, the State Department “is engaged in an effort to
 22 revise the U.S. Munitions List so that its scope is limited to those defense articles that provide
 23 the United States with a critical military or intelligence advantage or, in the case of weapons, are
 24 inherently for military end use.” The NPRM states that the items to be removed from the
 25 Munitions List “do not meet this standard,” primarily because such items purportedly are
 26 “widely available in retail outlets in the United States and abroad.” For this reason, the State

1 NPRM proposed to remove all non-automatic firearms up to .50 caliber (and any related
 2 technical data) from the Munitions List, and transfer jurisdiction over these items to the
 3 Commerce Department, which, due to its looser export controls,¹² does not typically take action
 4 to prohibit the publication of the data.

5 82. The Commerce NPRM, published the same day, outlined how the EAR would
 6 apply to the transferred items, which it likewise described as “essentially commercial items
 7 widely available in retail outlets and less sensitive military items.” Although Commerce would
 8 not comprehensively restrict the export of technology or software related to firearms, it would
 9 have general authority to impose a restriction on a case-by-case basis if it determined the export
 10 would be contrary to the national security or foreign policy interests of the United States, the
 11 promotion of human rights, or regional stability. *See* 15 C.F.R. § 742.6.

12 83. Under the EAR, however, Commerce lacks jurisdiction to restrict the export of
 13 “published” technology or software. *See* 15 C.F.R. §§ 734.3(b)(3), 734.7(a). The EAR define
 14 “published” broadly: it means “made available to the public without restrictions upon its further
 15 dissemination,” such as through, *inter alia*, (i) “Unlimited distribution at a conference, meeting,
 16 seminar, trade show, or exhibition, generally accessible to the interested public”; (ii) “Libraries
 17 or other public collections that are open and available to the public, and from which the public
 18 can obtain tangible or intangible documents”; or (iii) “Public dissemination (i.e., unlimited
 19 distribution) in any form (e.g., not necessarily in published form), including posting on the
 20 internet on sites available to the public[.]” 15 C.F.R. § 734.7. Thus, under the Commerce NPRM,
 21 publishing Firearm Files in any of these ways would create a self-executing loophole depriving
 22 the Commerce Department of all regulatory jurisdiction.

23 84. The May 24, 2018 State and Commerce NPRMs make no mention whatsoever of
 24 3D-printed firearms or Firearm Files. Indeed, despite the “published” loophole described above,
 25

26 ¹² For example, the ITAR require any exporter of items on the Munitions List to register with the State
 Department, *see* 22 C.F.R. § 122.1(a), but the EAR include no similar registration requirement.

1 the Commerce NPRM misleadingly claims that “[t]his proposed rule does not deregulate the
 2 transferred items.” Public commenters never received formal notice of the June 29, 2018
 3 Settlement Agreement, which reveals that the NPRMs apply to Firearm Files, and which was
 4 not made public in any form until the end of the comment period. One must read between the
 5 lines to understand that the NPRMs’ combined effect would be to permanently and almost
 6 entirely deregulate Firearm Files. Regardless, approximately 98% of commenters on the
 7 Commerce NPRM opposed the rule in general.

8 85. Despite the NPRMs’ obfuscation and misrepresentation, some commenters
 9 recognized the government’s true intentions. For example, Professor Susan Waltz of the
 10 University of Michigan’s Gerald R. Ford School of Public Policy pointed out that the State
 11 NPRM “would appear to give rise to the possibility of widespread and openly sanctioned
 12 circulation of open source, non-proprietary instructions for using computer-aided design (CAD)
 13 files to produce via 3D-printing technology . . . the firearms removed from USML.” Professor
 14 Waltz suggested a few simple ways the State Department could address this glaring problem—
 15 none of which the Department adopted. Another comment, from the Brady Campaign to Prevent
 16 Gun Violence, warned that, “under the proposed rules,” companies like Defense Distributed
 17 “would be able to freely release 3-D printing instructions and code into the public domain (and
 18 thereby enable the private production of firearms overseas and in the United States).” The State
 19 Department disregarded these comments, as well as comments from hundreds of individuals
 20 warning that “[t]he rule change would make the world a far more dangerous place” by
 21 “effectively enabling 3D printing of firearms in the U.S. and around the globe.”

22 86. The public comment period for both NPRMs concluded on July 9, 2018. Only
 23 after the comment period closed did the extent of the government’s surreptitious deregulatory
 24 effort become clear. The public reaction was swift and condemnatory. The supplemented
 25 Administrative Record in the prior *Washington* litigation includes samples of the more than
 26 106,000 emails the federal government received from members of the public between July 23

1 and July 27, 2018, urging the government not to deregulate 3D-printed guns; multiple letters
 2 from Congressional leaders urging reconsideration of the planned deregulation; and detailed
 3 comment letters from U.S. Senators, U.S. Representatives, and public policy organizations.

4 87. The supplemented Administrative Record also includes State Department
 5 documents that shed light on the true basis of its decision to deregulate 3D-printed guns. On July
 6 26, 2018—the day before the State Department issued the Temporary Modification and Letter—
 7 a Senate Foreign Relations staffer emailed State Department personnel to request an analysis as
 8 to why the Department had changed the position it took in the *Defense Distributed* litigation
 9 until April 2018. Joshua M. Paul of the State Department replied that this was a “technical legal
 10 question” that should be directed to the Department of Justice. In a following internal email
 11 exchange, Defendant Sarah Heidema—the Directorate official who previously certified an
 12 incomplete administrative record and inaccurately attested that the State Department
 13 “determined” that 3D-printable firearms “pose little national security concern”—argued that it
 14 was actually “a question for us [the State Department]” about “why we stopped arguing that the
 15 technology subject to the case, if released, would harm national security or foreign policy[.]”
 16 But Paul stated that the reason for the planned deregulation was “fundamentally a DOJ question”
 17 because “*nothing changed on our side*” as to those issues. (Emphasis added.)

18 88. Paul’s statements are consistent with contemporaneous remarks by then-State
 19 Department spokesperson Heather Nauert, who told the press on July 31, 2018, that the
 20 Department still had “equity” in the matter of 3D-printable guns, but that it “took the advice of
 21 the Department of Justice” to settle the *Defense Distributed* case by agreeing to deregulate them.

22 89. Another email exchange between Paul and a Senate Foreign Relations staffer
 23 starkly reveals the State Department’s failure to consider the particular problems posed by 3D-
 24 printed guns before issuing the Temporary Modification and Letter. On July 20, 2018, the Senate
 25 staffer wrote to Paul to ask about “the law enforcement and counter-terrorism implications of”
 26 the deregulation, noting that “[e]nabling the widespread acquisition of undetectable or largely

1 undetectable firearms" would potentially undermine "protection of domestic and international
 2 airline flights from terrorist hijacking/attacks." The staffer further asked: "What changes will be
 3 required by TSA here and abroad to deal with this?" Paul was unable to answer these basic
 4 questions. Instead, he admitted that the State Department "would need to refer you to TSA or
 5 other law enforcement organizations on this question." Paul suggested that the State Department
 6 could not answer these key national security questions because its "nexus on this issue was/is
 7 limited to [its] role in controlling exports of tech data[.]" Paul's statements, made just a week
 8 before the State Department issued the Temporary Modification, highlight the extent to which
 9 the Department utterly failed to consider the national security implications of their plan to
 10 deregulate 3D-printable guns.

11 **2. The Temporary Modification and Letter**

12 90. On July 27, 2018, as promised in the Settlement Agreement, the Directorate
 13 published the Temporary Modification on its website. The Temporary Modification states that
 14 "the Acting Deputy Assistant Secretary for Defense Trade Controls has determined that it is in
 15 the interest of the security and foreign policy of the United States to temporarily modify United
 16 States Munitions List (USML) Category I to exclude" the technical data described in the
 17 Settlement Agreement. On the same date, as promised, the Directorate sent a letter to Defense
 18 Distributed indicating that its files were approved for "unlimited distribution."

19 91. On July 30, 2018, Plaintiff States filed the prior *Washington* litigation, asking this
 20 Court to enjoin and invalidate the Temporary Modification and Letter.

21 92. On July 31, 2018, this Court entered a temporary restraining order enjoining the
 22 State Department Defendants from implementing or enforcing the Temporary Modification and
 23 Letter. Defense Distributed had planned to release its CAD files the following day:

24
 25
 26



Source: <https://defcad.com> (accessed July 28, 2018).

93. On August 27, 2018, the Court converted the temporary restraining order into a preliminary injunction against the State Department Defendants. The Court found a likelihood of success on the merits, and concluded that the States were likely to suffer many different categories of irreparable injury absent injunctive relief. *Washington v. U.S. Dep’t of State*, 318 F. Supp. 3d 1247 (W.D. Wash. 2018).

94. Specifically, the Court found that the online publication of Defense Distributed’s Firearm Files in accordance with the Temporary Modification and Letter “would subvert the domestic laws of states with more restrictive firearm controls and threaten the peace and security of the communities where these guns proliferate.” *Id.* at 1261. As the Court noted, plastic 3D-printed guns are “virtually undetectable in metal detectors and other security equipment intended to promote public safety at airports, sporting events, courthouses, music venues, and government buildings,” and, furthermore, “[t]he portability and ease of a manufacturing process that can be set up virtually anywhere would allow those who are, by law, prohibited from manufacturing, possessing, and/or using guns to more easily evade those limitations.” *Id.* The Court also highlighted several of the States’ “public safety, law enforcement, and proprietary interests” that were likely to be irreparably harmed by the impending deregulation of Firearm Files. *Id.* These included increased harm to residents based on the poor quality and “toy-like appearance” of 3D printed guns, harm to law enforcement in the proliferation of undetectable weapons that foil

1 standard forensic investigative techniques, and increased security measures required by the
 2 States “to maintain security if, as the private defendants advocate, every person owns a plastic
 3 gun.” *Id.*

4 95. Ultimately, the Court invalidated the Temporary Modification and Letter on the
 5 grounds that they were (1) contrary to AECA’s congressional notice requirement and (2)
 6 “arbitrary and capricious in two, independent respects.” *Washington*, 2019 WL 5892505. “First,
 7 the agency failed to consider aspects of the problem which Congress deemed important”—i.e.,
 8 “how the proliferation of weaponry and related technical data would impact world peace,
 9 national security, and foreign policy.” *Id.* at *8, 10. “Second, the agency failed to identify
 10 substantial evidence in the administrative record explaining a change of position that necessarily
 11 contradicts its prior determinations and findings regarding the threats posed by the subject CAD
 12 files and the need to regulate the same under the AECA.” *Id.* at *10.

13 96. As the Court found, notwithstanding the State Department’s assertion in the
 14 Temporary Modification that it “has determined that it is in the interest of the security and foreign
 15 policy of the United States” to remove Firearm Files from the Munitions List, the State
 16 Department in fact “evaluated the export controls on small caliber firearms only through the
 17 prism of whether restricting foreign access would provide the United States with a military or
 18 intelligence advantage”—without adequately considering world peace, national security, and
 19 foreign policy pursuant to AECA. *Id.* at *8. Furthermore, “[l]ess than two months before the
 20 NPRMs were published, the State Department had taken the position that 3D-printed weapons
 21 posed unique threats to world peace, national security, and the foreign policy of the United
 22 States,” as documented in the administrative record. *Id.* at *9. The Court found that, by issuing
 23 the Temporary Modification and Letter, and as shown in the NPRMs, “[t]he agency has simply
 24 abandoned, without acknowledgement or analysis, its previous position and has sub silentio
 25 found that delisting is consistent with world peace, national security, and U.S. foreign policy
 26 despite explicit, recent findings to the contrary.” *Id.*

1 **3. The Final Rules deregulating 3D-printed guns**

2 97. Despite all of the above, the federal government has continued its effort to fulfill
 3 the Defense Distributed Settlement Agreement by removing Firearm Files from the Munitions
 4 List and effectively deregulating them.

5 98. On or about November 12, 2019—the same day this Court granted summary
 6 judgment in the prior case—Defendants notified Congress of the Final Rules at issue.

7 99. As promised in the *Defense Distributed* Settlement Agreement, the State Final
 8 Rule removes all non-automatic firearms up to .50 caliber and any related, unclassified technical
 9 data from the Munitions List. As proposed in the NPRMs, the Final Rules transfer jurisdiction
 10 of all Category I Munitions List items from the State Department to the Commerce Department,
 11 including Firearm Files. The Commerce Final Rule provides that those items will instead be
 12 subject to the EAR.

13 100. Despite this Court’s clear direction in the prior *Washington* litigation that the
 14 State Department cannot remove items from the Munitions List without considering how the
 15 proliferation of technical data for the automatic production of 3D-printed guns would impact
 16 world peace, national security, and foreign policy, the Department made no meaningful attempt
 17 to do so. Further, the Department once again failed to provide a reasoned explanation for its
 18 reversal of position on controlling the export of Firearm Files.

19 101. The Commerce Final Rule is the first document in the formal rulemaking
 20 proceeding in which the federal government explicitly discloses that this jurisdictional transfer
 21 implicates Firearm Files. The Commerce Final Rule contains provisions specifically pertaining
 22 to Firearm Files that were not included in the Commerce NPRM.

23 102. In particular, the Commerce Final Rule provides that, notwithstanding the general
 24 exception from jurisdiction for “published” items (*see supra* ¶ 83), the Commerce Department
 25 will retain jurisdiction over a narrow subset of published Firearm Files: i.e., files “for the
 26 production of a firearm, or firearm frame or receiver” that are “made available by posting on the

1 internet in electronic format” and are “ready for insertion” into a computer or other machine that
 2 “makes use” of the files “to produce the firearm frame or receiver or complete firearm.”
 3 Commerce Final Rule § 734.7(c); *see also id.* § 732.2(b). **Attachment 3** hereto reflects the
 4 changes made by the Commerce Final Rule to 15 C.F.R. § 734.7.

5 103. As noted above, the Commerce Department’s lack of jurisdiction over
 6 “published” software and technology creates a self-executing loophole whereby anyone can
 7 largely deprive Commerce of jurisdiction over Firearm Files simply by publishing them.
 8 Publication can occur through a variety of means, as established by current regulations: for
 9 example, distributing the files on portable hard drives at a gun show constitutes publication, as
 10 does emailing them to members of the public who sign up for a subscription. *See* 15 C.F.R.
 11 § 734.7(a); *supra* ¶ 83. Indeed, Defense Distributed has already published at least some of its
 12 Firearm Files, including the files for the Liberator pistol. *See supra* ¶¶ 57, 78. Under the
 13 Commerce Final Rule, only a very narrow subset of published Firearm Files remain nominally
 14 subject to export control, while glaring loopholes make it easy to export and disseminate Firearm
 15 Files without a license and without any restrictions.

16 104. First, the Final Rules authorize published Firearm Files to be exported by any
 17 means other than “posting on the internet”—such as, for example, email, direct file transfer, or
 18 transfer via a physical hard drive. Such exports will not be restricted in any way, as they will be
 19 entirely outside Commerce’s jurisdiction. For example, a company like Defense Distributed
 20 could advertise the availability of its CAD files on the internet, then email the files directly to
 21 any foreign individual or organization that requests them, without ever implicating Commerce’s
 22 export-control jurisdiction (because the files are never “post[ed] on the internet”). Such foreign
 23 recipients of Firearm Files may have links to terrorism or organized crime, or otherwise pose
 24 security threats. This enables the very scenario the State Department feared as of April 2018:
 25 that if Firearm Files are exported “beyond the reach of U.S. law, they could be used to threaten
 26 U.S. national security, U.S. foreign policy interests, or international peace and stability.” The

1 Commerce Department currently purports to share the same fears: “As the State Department
 2 noted in the *Defense Distributed* litigation, unrestricted export of such files abroad could have a
 3 potential detrimental effect on aspects of U.S. national security and foreign policy,” warranting
 4 export control. State Final Rule, State Final Rule, 85 Fed. Reg. 3819.

5 105. Second, once Firearm Files are lawfully exported as described above, they will
 6 be in the hands of foreign recipients and beyond the reach of U.S. export control, and such
 7 foreign recipients can post them on the internet at will. As established in the prior litigation,
 8 internet posting makes Firearm Files available worldwide (including *within* the United States),
 9 because “the fact is that the internet is both domestic and international.” *Washington*, 318 F.
 10 Supp. at 1255. This simple end-run around Commerce’s purported jurisdiction over Firearm
 11 Files will be the inevitable, direct result of the Final Rules.

12 106. Third, the Commerce Final Rule’s toothless prohibition on internet posting is
 13 limited to Firearm Files in formats “such as AMF or G-code” that are “ready for insertion into
 14 . . . equipment” that uses the files “to produce the firearm frame or receiver or complete firearm.”
 15 Commerce Final Rule § 734.7(c). This limited retention of jurisdiction excludes files that are
 16 technically *not* in a format readable by a 3D printer, but that can easily be converted to a readable
 17 format. CAD files, for instance, are design files that typically do not communicate directly with
 18 a 3D printer, but commercially available or free 3D-printing software can easily convert these
 19 design files into a format that can be read by a 3D printer. *See Washington*, 2019 WL 5892505,
 20 Dkt. # 43-2 at 58–64 (Decl. of Shwetak Patel, Ph.D) ¶¶ 10–13. Under the Commerce Final Rule’s
 21 plain text, such files would be entirely outside Commerce’s jurisdiction and could be posted on
 22 the internet by anyone, from anywhere. For example, Defense Distributed could post its CAD
 23 files on the internet with no restrictions. In this way, the federal government will have fulfilled
 24 its promise in the Settlement Agreement to authorize the “unlimited distribution” of such files.

25 107. Fourth, the Commerce Final Rule appears to limit export-control jurisdiction to
 26 certain published Firearm Files that are *already* “made available” by internet posting. *See*

1 Commerce Final Rule § 734.7(c). The “made available” jurisdictional trigger—which is in the
 2 past or present tense—appears to limit the Commerce Department to after-the-fact regulation
 3 only, i.e., once the files are already posted online and the damage is done. Once Firearm Files
 4 are released on the internet, they cannot feasibly be clawed back from everyone who has
 5 downloaded them.

6 108. Fifth, the Commerce Final Rule’s limited retention of jurisdiction only applies to
 7 Firearm Files “for the production of a firearm, or firearm frame or receiver,” without retaining
 8 any jurisdiction over Firearm Files for the production of other key firearm “components”—such
 9 as the barrel or magazine. *See* Commerce Final Rule § 734.7(c). Currently, Category I of the
 10 Munitions List includes not only technical data related to controlled firearms, but also technical
 11 data related to “[c]omponents, parts, accessories and attachments” for controlled firearms. 22
 12 C.F.R. § 121.1. Under the Final Rules, the latter would nominally be transferred to Commerce’s
 13 purview, but Commerce would not retain export-control jurisdiction over published Firearm
 14 Files for the production of “components” other than the frame or receiver.

15 109. In addition to suffering from the severe limitations and loopholes described
 16 above, the Final Rules vest the Commerce Department with discretion to grant licenses
 17 permitting unrestricted internet posting from within the United States. As evidenced by the
 18 Defense Distributed Settlement Agreement and its position throughout the prior *Washington*
 19 litigation in this Court, the federal government’s goal has been to permit the “unlimited
 20 distribution” of Firearm Files via the internet. Under the Final Rules, the Commerce Department
 21 would have the power to grant licenses to do so, with no Congressional check on its discretion.
 22 Whereas items on the Munitions List cannot be removed absent 30 days’ notice to Congress, *see*
 23 22 U.S.C. § 2778(f)(1), items on the Commerce Control List are not subject to any such notice
 24 requirement.

25 110. The Commerce Final Rule does not indicate what criteria the Commerce
 26 Department would apply, if any, in deciding whether to grant or deny a license application. Nor

1 does it say what restrictions, if any, the Commerce Department would place on any licenses to
 2 export Firearm Files. For example, the EAR's provisions for end-user and end-use restrictions
 3 do not appear to apply to Firearm Files. *See* 15 C.F.R. § 736.2.

4 111. In sum, if the Final Rules go into effect on March 9, 2020, as scheduled, the State
 5 Department will no longer have jurisdiction over downloadable gun files, Congress will no
 6 longer have direct oversight over such files, and the Commerce Department under its regulations
 7 will lack any meaningful jurisdiction to regulate the export of such files once they are published.
 8 In promulgating these two Final Rules together, the federal government is authorizing the
 9 circumvention of the very laws it is entrusted to enforce to protect U.S. national security and
 10 foreign policy interests.

11 112. Despite this impending sea change in the regulation of Firearm Files, neither the
 12 State NPRM nor the Commerce NPRM gave adequate notice of their implications for 3D-
 13 printable gun files. Indeed, the Commerce NPRM misleadingly claims that “[t]his proposed rule
 14 does not deregulate the transferred items.” (The Commerce Final Rule makes the same claim,
 15 despite the fact that it takes the unprecedented step of making published Firearm Files generally
 16 exportable.)

17 113. Moreover, the government failed to provide notice of the Commerce Final Rule's
 18 provisions regarding Commerce's purported retention of limited jurisdiction over Firearm Files
 19 “post[ed] on the internet” This deprived the public of an opportunity to comment on the
 20 significant problems with that essentially meaningless retention of jurisdiction—namely, that the
 21 new regulatory regime has so many loopholes and is so easily circumvented that it is essentially
 22 meaningless.

23 114. The Final Rules are an outgrowth of the same arbitrary and capricious process as
 24 the agency actions at issue in the prior *Washington* litigation. Like the NPRMs and the State
 25 Department's Temporary Modification and Letter, the Final Rules wholly reverse the federal
 26 government's previous position that Firearm File exports should be prohibited in light of their

1 unique threats to world peace, national security, and foreign policy interests. The Final Rules are
 2 based on the same or substantially the same administrative record previously before this Court,
 3 which demonstrated arbitrary and capricious agency decisionmaking. And the Final Rules fulfill
 4 the federal government's promise in the Settlement Agreement to "fully pursue" the rulemaking
 5 that the Temporary Modification and Letter sought to preemptively implement.

6 115. The federal government's decision to remove Firearm Files from the Munitions
 7 List and deregulate them appears to have been made long ago, when it entered the *Defense*
 8 *Distributed* Settlement Agreement in April 2018. In making its decision, the federal government
 9 failed to consider public comments, failed to consider important aspects of the problem, and
 10 failed to explain its change of position that contradicts previous factual findings. *See*
 11 *Washington*, 2019 WL 5892505, at *3, 10.

12 116. As with the Temporary Modification and Letter, the Final Rules fail to explain
 13 the government's complete reversal of its previous policy that Firearm Files should be regulated
 14 under AECA, *see* 22 U.S.C. § 2778(a)(1)—despite acknowledged concerns regarding their
 15 impact on world peace and U.S. security and foreign policy. Previously, the State Department's
 16 policy of maintaining Firearm Files on the Munitions List was based on substantiated concerns
 17 that the widespread availability of untraceable, undetectable 3D-printed guns could be used in
 18 assassinations, hijacking, and terrorism, that 3D-printed guns could be used by rogue actors to
 19 evade embargos and create their own weapons using readily available materials, and that the
 20 international availability of 3D-printed guns would undermine the domestic laws of nations with
 21 more restrictive firearms laws, and thus undermine U.S. relationships with those nations. The
 22 prior policy is "well-documented in the administrative record." *Washington*, 2019 WL 5892505,
 23 at *9.

24 117. Now, however, the State Department has removed Firearm Files from the
 25 Munitions List solely because it determined that they "do not confer a critical military or
 26 intelligence advantage and are not inherently military based on their function." State Final Rule,

1 85 Fed. Reg. 3819. The Court previously found that this rationale is inadequate. *See Washington*,
 2 2019 WL 5892505, at *8.

3 118. Meanwhile, the Commerce Final Rule nominally re-adopts the prior government
 4 policy reflecting the unique threats posed by Firearm Files, even as Commerce promulgates a
 5 deregulatory rule inconsistent with that policy.

6 119. In sum, the Final Rules are the culmination of the federal government's covert
 7 agreement to deregulate Firearm Files, following the opaque NPRMs and the unlawful
 8 Temporary Modification and Letter. The Final Rules are final agency actions that failed to
 9 comply with APA procedural requirements, are contrary to law, and are arbitrary and capricious.
 10 The Final Rules have far-reaching implications for national security and the safety and security
 11 of the Plaintiff States and their residents.

12 **F. Adverse Effects on the States' Public Safety Laws**

13 120. The Plaintiff States in this matter have their own extensive and comprehensive
 14 statutory and regulatory schemes regarding firearms. The aim of the States' laws is the same: to
 15 protect the public by keeping guns out of the hands of those who should not possess them—
 16 minors, convicted felons, the mentally ill, and those subject to protective and no-contact orders.
 17 The States' ability to protect the public will be seriously undermined if the Final Rules are
 18 allowed to stand. This action will make it far easier for anyone—including foreign bad actors
 19 and individuals ineligible to possess firearms—to easily obtain untraceable and undetectable
 20 firearms with the click of a button.

21 **1. Washington's Firearms Laws**

22 121. The State of Washington has a comprehensive statutory scheme regulating the
 23 possession, licensing, registration, and use of firearms and dangerous weapons—including,
 24 specifically, 3D-printed firearms and Firearm Files. *See Chapter 9.41 RCW.*

1 122. These laws promote public safety by keeping guns out of the hands of those who,
 2 for various reasons, should not have access to them, including minors, persons convicted of
 3 violent felonies, the mentally ill, and persons subject to various protection and no-contact orders.

4 123. As noted, Defense Distributed's mission is to eviscerate *any* regulation of
 5 firearms by providing to anyone—including the categories of persons just mentioned—the
 6 ability to easily manufacture firearms that can evade metal detectors, are untraceable because
 7 they carry no identifying markings, and shoot bullets that cannot be forensically linked to the
 8 gun. Defendants' unlawful actions in effectively deregulating Firearm Files—including those
 9 Defense Distributed will undoubtedly export and disseminate once the Final Rules go into
 10 effect—and placing them instead under the aegis of an agency that effectively lacks jurisdiction
 11 over them, will allow Cody Wilson and others like him to achieve their dream.

12 124. Indeed, Defendants' unlawful actions will cripple Washington's ability to enforce
 13 its firearm and dangerous weapons regulations—to the great detriment of the public and public
 14 safety.

15 125. Washington law expressly outlaws undetectable 3D-printed guns, providing that
 16 it is unlawful for any person to "manufacture, own, buy, sell, loan, furnish, transport, or have in
 17 possession or under control, any . . . undetectable firearm," and prohibiting the manufacture of
 18 any untraceable firearm with the intent to sell it. Wash. Rev. Code § 9.41.190.

19 126. Washington law prohibits certain persons from obtaining or possessing firearms.
 20 For example, persons cannot possess firearms if they have been convicted or found not guilty by
 21 reason of insanity of crimes including serious felony offenses and certain crimes committed by
 22 one family member against another (e.g., stalking, reckless endangerment, coercion). Wash. Rev.
 23 Code §§ 9.41.040(1), (2)(a)(i)-(ii). Persons subject to a variety of protection and no contact
 24 orders are also prohibited from possessing firearms.¹³ Wash. Rev. Code § 9.41.040(2)(a)(iii).

25

¹³ These include sexual assault protection orders (Wash. Rev. Code 7.90), stalking protection orders (Wash.
 26 Rev. Code 7.92), anti-harassment protection orders (Wash. Rev. Code 10.14), and domestic violence protection
 orders (Wash. Rev. Code 26.50).

1 Persons who have been involuntarily committed for mental health treatment may not possess
 2 firearms. Wash Rev. Code § 9.41.040(2)(a)(iv). Finally, persons under the supervision of the
 3 Washington Department of Corrections cannot possess firearms or ammunition. Wash Rev.
 4 Code § 9.41.045.

5 127. Washington law also has set up an extensive system of rules to ensure these
 6 persons cannot buy firearms. For example, a person who applies to buy a pistol from a dealer
 7 must provide a laundry list of information, including his or her name, residential address, date
 8 and place of birth, driver's license number or state identification card number, and statement that
 9 the buyer is eligible under Washington law to possess the gun, as well as a description of the
 10 gun, including the make, model, caliber and manufacturer's number. Wash Rev. Code
 11 § 9.41.090(5). The dealer cannot deliver the pistol to the buyer, even if he or she is eligible to
 12 possess the gun, unless the manufacturer's number for the gun is recorded on the application and
 13 transmitted to the local police chief or sheriff where the buyer lives. *Id.* § 9.41.090(6)(iv). The
 14 dealer must keep a record in a book of each pistol sold, including information about the person
 15 buying the weapon (e.g., name, address, etc.) and the weapon (e.g., caliber, make, model and
 16 manufacturer's number), and the book must be signed by both the buyer and the dealer in one
 17 another's presence. *Id.* § 9.41.110(9)(a). The dealer is also obligated to give to the buyer a copy
 18 of a pamphlet advising the buyer of legal restrictions on the use of firearms and firearms safety.
 19 *Id.* § 9.41.090(6)(b)(ii).

20 128. One of the cornerstones of Washington's firearms regulatory structure is the use
 21 of background checks. Essentially all sales or transfers of firearms in Washington are subject to
 22 background checks.¹⁴ Wash. Rev. Code § 9.41.113(1). This includes not just sales by dealers,
 23 but also sales or transfers at gun shows and online. *Id.* Even sales or transfers between unlicensed
 24 parties must be run through a licensed dealer in order to ensure that a background check is
 25

26 ¹⁴ The exceptions to this rule are extremely limited (e.g., transfers between immediate family members,
 antique firearms, to prevent imminent death or great bodily harm, etc.). RCW 9.41.113(4).

1 completed. Wash Rev. Code § 9.41.113(3). The purpose of the background check is simple and
 2 obvious: to ensure that persons prohibited by law from possessing firearms are unable to do so.
 3 It is a crime under Washington law to “knowingly or recklessly allow, facilitate, aid, or abet the
 4 manufacture or assembly of an undetectable firearm or untraceable firearm” by a person
 5 ineligible to possess a firearm, such as by transferring Firearm Files to such a person absent a
 6 background check. Wash. Rev. Code 9.41.325.

7 129. The Final Rules at issue will effectively authorize the global dissemination of
 8 Firearm Files for the automated production of 3D-printed weapons, making it far easier for
 9 individuals to evade Washington’s laws prohibiting certain categories of persons from protecting
 10 firearms. Such persons will simply be able to print their own firearms without undergoing a
 11 background check or making a purchase from a licensed dealer.

12 130. If the Final Rules go into effect, the State of Washington stands to suffer extreme
 13 and irreparable harm. Persons ineligible to possess firearms under Washington law will easily
 14 be able to obtain downloadable guns that they can produce at home using a 3D printer. Further,
 15 absent any meaningful restrictions on exporting Firearm Files, foreign persons who may reside
 16 in or may enter Washington will have unrestricted access to Firearm Files. Washington law
 17 enforcement will have no means of detecting such weapons using standard equipment such as
 18 metal detectors, and no means of tracing such weapons because they have no serial numbers.

19 131. 3D printers are widely available to the general public in Washington. For
 20 example, Amazon has hundreds of 3D printers on its website for sale to the public. In addition,
 21 such printers are widely accessible at Washington colleges and universities, including the
 22 University of Washington in Seattle. *See, e.g.*, <https://itconnect.uw.edu/learn/workshops/3d-printing-consultation/> (University of Washington); <https://vcea.wsu.edu/fiz/3d-printing/> (Washington State University); <https://www.cwu.edu/multimodal-education/3d-printing> (Central Washington University).

1 132. In sum, the Final Rules will cripple the State of Washington’s ability to exercise
 2 its sovereign police powers and secure public safety.

3 **2. California’s Firearms Laws**

4 133. California’s Dangerous Weapons Control Law contains a comprehensive set of
 5 statutes regulating firearms. Cal. Penal Code §§ 16580, 23500.

6 134. Ghost guns are a source of growing concern in California. They have been used
 7 in at least three mass shootings in the State: one at Saugus High School in November 2019, one
 8 in Rancho Tehama Reserve in 2017, and one in Santa Monica in 2013. Recently, federal and
 9 local law enforcement officials arrested ten suspects in a Hollywood ghost gun ring that was
 10 supplying guns to criminals. One official involved in the arrests noted a trend among Southern
 11 California gangs of making ghost guns, while an LAPD official noted that ghost guns are “ending
 12 up in the hands of some of our most violent street gangs here in Los Angeles.”

13 135. The actions taken by the Government and Defense Distributed will exacerbate
 14 this problem, undermining California’s firearms laws and harming the public. The following
 15 allegations provide examples of the laws that would be undermined.

16 **a. California’s Unsafe Handgun Act**

17 136. In 1999, the California Legislature enacted the Unsafe Handgun Act in response
 18 to the proliferation of low-cost, cheaply made handguns that are disproportionately used in
 19 crimes. *Fiscal v. City and Cty. of San Francisco*, 158 Cal. App. 4th 895, 912 (2008). Before a
 20 handgun may be manufactured, imported, sold, or transferred in California, it must pass a test
 21 by an independent, certified laboratory establishing that the gun satisfies certain safety
 22 requirements. Cal. Penal Code § 32010. For instance, revolvers and pistols must pass a
 23 drop-safety test and satisfy certain firing requirements. Cal. Penal Code §§ 31900, 31905. In
 24 general and barring specific exemptions, pistols that have not been grandfathered in under the
 25 Act must come equipped with chamber load indicators, magazine disconnects, and
 26 microstamping technology that imprints identifying information on expended cartridge casings.

1 Cal. Penal Code § 31910(b)(4), (7). Pistols that do not satisfy these requirements may not be
 2 manufactured, imported, sold, or transferred in California. Cal. Penal Code § 32000. It is
 3 improbable that any 3D printed pistol would come under an exemption or be grandfathered in,
 4 meaning it would have to comply with these requirements before it could be lawfully possessed
 5 in the State.

6 137. Firearm Files allow criminals to easily thwart these requirements. And law
 7 abiding citizens who use those files to make a handgun using a 3D printer run the risk of violating
 8 state law, since any handgun printed and assembled (i.e., manufactured) would be illegal unless
 9 it was made for submission and testing purposes to comply with the Unsafe Handgun Act.

10 **b. California regulates machine guns, assault rifles, and large-capacity
 11 magazines**

12 138. California prohibits the manufacture and possession of military-style firearms
 13 and large capacity magazines. It is a felony to manufacture a machinegun or assault rifle or
 14 convert a firearm into a machinegun or assault weapon. Cal. Penal Code § 30600, 32625;
 15 *see also* Cal. Penal Code §§ 30510, 30515. It is also a crime to manufacture magazines that hold
 16 more than ten rounds. Cal. Penal Code §§ 16740, 16150, 32310.

17 139. The Final Rules will effectively deregulate Firearm Files that, upon information
 18 and belief, would allow these prohibited military-style weapons to be manufactured within
 19 California in contravention of California law.

20 **c. California regulates the purchase, sale, and transfer of firearms**

21 140. California also addresses gun violence and crime through a comprehensive
 22 scheme regulating the sale and transfer of firearms. These laws ensure that firearms sales and
 23 transfers are overseen by licensed firearms dealers. Cal. Penal Code §§ 26500, 28050.
 24 Employees of these firearms dealers must pass a background check, and the dealers must
 25 conduct business in designated buildings (with exceptions for gun shows). Cal. Penal Code §§
 26 26915, 26805. Among other important laws, licensed firearms dealers implement California's

1 ten-day waiting period laws. Cal. Penal Code §§ 26815, 27540. These laws prevent prohibited
 2 persons from acquiring firearms and ensure that purchasers have a cooling-off period, which
 3 reduces violent crime and suicide.

4 141. Firearm Files that will soon be deregulated promote evasion of these protections.

5 **d. California law prohibits certain persons from possessing firearms**

6 142. California law prohibits many classes of people from possessing firearms. By
 7 way of illustration, minors may not possess handguns or live ammunition. Cal. Penal Code
 8 §§ 29610, 29650. Those convicted of a felony, or who have an outstanding warrant for a felony,
 9 may not possess any firearm. Cal. Penal Code § 29800. Those convicted of certain
 10 misdemeanors, including domestic violence and threatening public officials, may not possess
 11 firearms. Cal. Penal Code § 29805. And those who are receiving inpatient treatment for a mental
 12 disorder or who have communicated a threat of physical violence to their licensed
 13 psychotherapist may not possess firearms. Cal. Welf. & Inst. Code § 8100.

14 143. The Final Rules effectively deregulating 3D-printable gun files will remove
 15 regulatory barriers in place that prevent these prohibited classes from obtaining firearms.

16 **3. Colorado's Firearms Laws**

17 144. Colorado regulates the possession, sale, and transfer of firearms within the state,
 18 including by requiring background checks for firearms transfers between private individuals and
 19 at gun shows. Colo. Rev. Stat. §§ 18-12-11; 12-26.1-101. The state also bans certain dangerous
 20 weapons and prohibits certain categories of persons from purchase or possession of a firearm.
 21 Colo. Rev. Stat. §§ 18-12-102(1); 18-12-108.5(1); 18-12-108(1).

22 145. Like many states, Colorado prohibits concealed carry of firearms without a
 23 permit, Colo. Rev. Stat. § 18-12-105, and also prohibits members of the general populace from
 24 carrying firearms on school grounds, Colo. Rev. Stat. §§ 18-12-105.5, 18-12-214(3), or from
 25 carrying firearms in public buildings equipped with security screening. § 18-12-214(4). Because
 26 they have few metal parts, can be acquired by ineligible individuals without a background check,

1 and are virtually untraceable, printable firearms can be used to evade all of these statutory
 2 restrictions.

3 146. Colorado prohibits outright the possession of firearm silencers, machine guns,
 4 short shotguns, short rifles, and ballistic knives. Colo. Rev. Stat. § 18-12-102(1).

5 147. Under Colorado law, individuals under the age of eighteen are generally
 6 prohibited from possessing handguns, Colo. Rev. Stat. § 18-12-108.5(1)(a), and certain previous
 7 offenders are generally barred from firearm possession altogether. Colo. Rev. Stat.
 8 § 18-12-108(1). Individuals subject to civil protection orders may not possess or attempt to
 9 purchase or receive a firearm while the protection order is in effect, Colo. Rev. Stat.
 10 § 18-6-803.5(1)(c), and in fact must generally surrender any firearms in their possession within
 11 24 hours of being served with a qualifying order. Colo. Rev. Stat. § 18-1-1001(9).

12 148. To effectuate these provisions and other similar restrictions on firearm
 13 possession, Colorado requires virtually all private firearms sales, including those at gun shows,
 14 to be preceded by a background check. Colo. Rev. Stat. §§ 18-12-112; 12-26.1-101.

15 149. The Final Rules will undermine Colorado's efforts to prevent the proliferation of
 16 dangerous weapons and to ensure that those ineligible to possess firearms under state law are not
 17 able to obtain them. Rather than purchasing a firearm from a dealer or private individual, which
 18 transfer would generally require a background check, an individual ineligible to legally possess
 19 a firearm could simply purchase a 3D printer, download the plans, and manufacture an
 20 untraceable firearm at home within a matter of hours. This safety risk is of particular concern to
 21 Colorado, in light of the history of tragic mass shootings in the State, including shootings that
 22 have taken place on school grounds. Examples include the shooting at Columbine High School
 23 in 1999, which claimed the lives of 12 students and one teacher, as well as the lives of the two
 24 shooters. In 2012, a mass shooting at an Aurora, Colorado movie theater claimed the lives of 12
 25 additional victims. Hundreds more innocent victims have been killed or injured in other shooting
 26 events in Colorado's recent history.

1 **4. Connecticut's Firearms Laws**

2 150. Connecticut comprehensively regulates the possession, sale and transfer of all
 3 firearms within and into the state and bans the most dangerous military-style firearms
 4 completely. It also regulates the classes of people who may lawfully possess otherwise lawful
 5 firearms and prohibits individuals from possessing firearms who pose the most serious threat to
 6 public safety, and in some instances, themselves.

7 **a. Connecticut's regulation of all lawful firearm owners**

8 151. In Connecticut, people who wish to possess handguns—pistols or revolvers—are
 9 required to have a valid pistol permit; an eligibility certificate to purchase pistols or revolvers;
 10 an eligibility certificate to purchase long guns, or be a police officer or one of the exemptions
 11 listed in law. Not everyone who wishes to have a pistol permit in Connecticut is granted one; he
 12 or she must be a suitable person to receive such permit. Conn. Gen. Stat. § 29-28. Individuals
 13 who wish to possess a pistol or revolver must satisfy basic safety training requirements. Conn.
 14 Gen. Stat. § 29-36f(b); Conn. Gen. Stat. § 29-28 (b).

15 **b. Connecticut's regulation of sale, purchase, and transfer of possession
 16 of all firearms, even between lawful firearm owners**

17 152. Connecticut closely regulates the sale and transfer of all firearms, even between
 18 lawful firearm owners. In Connecticut, no person, firm or corporation shall sell, deliver or
 19 otherwise transfer any pistol or revolver to any person who is prohibited from possessing a pistol
 20 or revolver. Conn. Gen. Stat. § 29-33(a). The purchaser of a pistol or revolver must have a valid
 21 permit to carry a pistol or revolver. Conn. Gen. Stat. § 29-33(b). Compliance with these
 22 requirements is ensured by requiring all sales or transfers of pistols or revolvers in Connecticut
 23 be made through a process established by the Connecticut Department of Emergency Services
 24 and Public Protection. Conn. Gen. Stat. § 29-33(c).

25 153. Similarly, Connecticut regulates the sale and transfer of long guns such as rifles
 26 and shotguns. All parties to such transfers must ensure, through a process established by the

Connecticut Department of Emergency Services and Public Protection, that the purchaser of the long gun has a valid long gun eligibility certificate that has not been revoked or suspended. Conn. Gen. Stat. § 29-36l(f).

154. Connecticut regulation also restricts how many firearms a person can sell a year without becoming a federally licensed firearm dealer or obtaining a permit. Conn. Gen. Stat. § 29-28.

155. Unlike many states, Connecticut's firearm regulations extend to the sales, transfers or exchanges taking place at "gun shows." Connecticut requires that gun show sellers obtain an authorization number from the Connecticut Special Licensing and Firearms Unit. Conn. Gen. Stat. § 29-37g(c).

c. Connecticut's prohibition on possession of a firearm by certain persons

156. Connecticut prohibits certain persons from obtaining or possessing firearms. For example, persons cannot possess firearms if they have been convicted or found not guilty by reason of insanity of crimes including serious felony offenses and certain crimes committed by one family member against another. Conn. Gen. Stat. § 53a-217. No person convicted for a felony or a misdemeanor crime of domestic violence involving the use or threatened use of physical force or a deadly weapon may possess any firearms in Connecticut. Conn. Gen. Stat. § 29-36f(b); Conn. Gen. Stat. § 29-28 (b).

157. The types of crimes that render someone ineligible to possess a firearm in Connecticut are wide ranging and include: 1) illegal possession of narcotics or other controlled substances; 2) criminally negligent homicide; 3) assault in the third degree; 4) assault of a victim 60 or older in the third degree; 5) threatening; 6) reckless endangerment in the first degree; 7) unlawful restraint in the second degree; 8) riot in the first degree; 9) riot in the second degree; 10) inciting to riot; 11) stalking in the second degree; or 12) anyone who has been convicted as a delinquent for the commission of a serious juvenile offense, 13) anyone who has been

1 discharged from custody within the preceding twenty years after having been found not guilty
 2 of a crime by reason of mental disease or defect; 14) anyone who has been confined in a hospital
 3 for persons with psychiatric disabilities within the preceding sixty months by order of a probate
 4 court; 15) anyone who has been voluntarily admitted to a hospital for persons with psychiatric
 5 disabilities within the preceding six months for care and treatment of a psychiatric disability and
 6 not solely for alcohol or drug dependency; 16) anyone who is subject to a firearms seizure order
 7 issued pursuant to Connecticut General Statute Section 29-38c after notice and an opportunity
 8 to be heard has been provided to such person; 17) anyone who is an alien illegally or unlawfully
 9 in the United States; 18) anyone who satisfies any of the federal disqualifiers listed in Title 18
 10 U.S.C. Chapter 44. *See* Conn. Gen. Stat. § 29-28(b); Conn. Gen. Stat. § 29-36f(b).

11 158. Connecticut also prohibits a person under the age of 21 years of age from
 12 obtaining a pistol or revolver. Conn. Gen. Stat. § 29-36f(a).

13 **d. Connecticut's regulation of assault weapons and machine guns**

14 159. Connecticut prohibits the possession of an assault weapon or any "part or
 15 combination of parts" that can be readily assembled into an assault weapon, Conn. Gen. Stat.
 16 § 53-202c unless the owner obtained a Certificate of Possession prior to January 1, 2014.
 17 Conn. Gen. Stat. § 53-202d.

18 160. Any Connecticut resident who owns a fully automatic weapon or machine gun is
 19 required to complete a state form registering that firearm with Connecticut immediately upon
 20 receiving it, and upon an annual basis. Conn. Gen. Stat. § 53-202(g).

21 161. The Final Rules effectively deregulating 3D-printable gun files will nullify the
 22 State of Connecticut's laws prohibiting certain categories of persons from possessing firearms.

23 162. If the Final Rules enter into effect, the State of Connecticut stands to suffer
 24 extreme and irreparable harm. Persons ineligible to possess firearms under Connecticut law will
 25 easily be able to obtain downloadable guns that they can produce at home using a 3D printer.
 26 Connecticut law enforcement will have no means of detecting such weapons using standard

1 equipment such as metal detectors, and no means of tracing such weapons because they have no
 2 serial numbers.

3 163. In sum, the Government's actions are an extreme infringement on the State of
 4 Connecticut's sovereign right to enact and enforce its public safety laws.

5 **e. Connecticut's prohibition on the manufacture and transfer of ghost
 6 guns**

7 164. In 2019, Connecticut passed legislation to address the growing problem of
 8 untraceable and undetectable firearms. *See generally*, Conn. Public Act 19-6, “*An Act Concerning
 9 Ghost Guns*,” (effective October 1, 2019). Connecticut now expressly prohibits anyone from
 10 manufacturing a firearm without engraving it with a unique serial number or marking that is
 11 obtained from and registered with Connecticut law enforcement. *Id* at § 2(a). Connecticut also
 12 prohibits the manufacturing of firearms that can evade metal detectors, or assisting prohibited
 13 persons from manufacturing them. *Id* at § 4(a).

14 **5. Delaware's Firearms Laws**

15 165. Delaware protects the public by prohibiting machine guns, the irresponsible sales
 16 of firearms, and the unauthorized possession and use of firearms by certain categories of persons
 17 who constitute dangerously high levels of risk to others. Delaware's scheme to provide this
 18 protection will be rendered entirely ineffective if the Final Rules enter into effect. Delaware will
 19 be substantially and irreparably harmed if it is unable to enforce its laws to protect individuals
 20 in Delaware from these risks and ensure public safety and security.

21 166. Delaware restricts the possession of firearms by several categories of individuals
 22 through the crime Possession of a Deadly Weapon by a Person Prohibited, with some narrow
 23 exceptions. *See* 11 Del. C. § 1448. Persons convicted of felony offenses in Delaware or
 24 elsewhere, persons who have been civilly committed due to a serious mental illness and are a
 25 danger to themselves or others, those convicted of drug offenses, those convicted of crimes of
 26 domestic violence or who are subjects of a Protection from Abuse Order, those who fail to appear

1 for court when charged with a felony, and those who possess illegal drugs and firearms at the
 2 same time are all prohibited from possessing firearms by Delaware law. Delaware has
 3 determined that each of these categories of individuals create an unreasonably high risk of danger
 4 if permitted to possess a firearm. A conviction under this statute, where the person's prohibited
 5 status is based on a violent prior conviction, requires a mandatory minimum period of
 6 incarceration of 3 years or longer in prison. 11 *Del. C.* § 1448 (e). Defendants' actions subvert
 7 Delaware's judgment and ignores the high risk to people living, working, and visiting Delaware.

8 167. Delaware requires criminal history background checks as a precondition, again
 9 with narrow exceptions, to the sale of any firearm in the State of Delaware by licensed or
 10 unlicensed sellers or transferors. 11 *Del. C.* §§ 1448A, 1448B. This requirement will be entirely
 11 frustrated if the Government's course of action is permitted to proceed. Defendants' actions
 12 assist with transfers in violation of Delaware law and therefore substantially undermines
 13 Delaware's compelling state interests.

14 168. In Delaware, it is also a crime to give a firearm to a person prohibited, 11 *Del. C.*
 15 § 1454, to unlawfully permit a minor access to a firearm, 11 *Del. C.* § 1456, and to possess a
 16 machine gun or any weapon adaptable for use as a machine gun, 11 *Del. C.* § 1444. The
 17 Government's actions obviate Delaware's statutory protections, muddles an important
 18 enforcement paradigm, and creates an unnecessary conflict with state law.

19 169. Each of these vital, protective measures designed to keep the Delaware public
 20 safe and secure are vitiated if Defendants' actions are implemented. Long-standing regulations
 21 designed to foster community safety are rendered meaningless if any person can turn on a
 22 computer and 3D printer in the privacy of their home and cheaply and quickly manufacture a
 23 fully-functioning firearm. Lacking any serial number, Delaware will be unable to trace these
 24 firearms. Because they are made of non-metallic components, these firearms will easily evade
 25 detection in public spaces. Defendants' actions in encouraging and facilitating the violation of
 26 Delaware laws not only constitutes a gross encroachment on Delaware's constitutional and

1 sovereign authority to exercise reasonable and long-respected police powers, it puts people in
 2 Delaware at unacceptable levels of unjustified risk.

3 **6. The District of Columbia's Firearms Laws**

4 170. The District of Columbia, like the States, has a comprehensive statutory scheme
 5 regulating the possession, licensing, and registration of firearms. Certain types of weapons are
 6 prohibited entirely.

7 171. District of Columbia law prohibits certain persons from registering firearms.¹⁵
 8 For example, persons cannot register firearms if they have been acquitted by reason of insanity
 9 within the last five years, or have been voluntarily or involuntarily committed to a mental
 10 hospital or institution in that time. D.C. Code § 7-2502.03. Other persons prohibited from
 11 registering firearms include persons convicted of a felony, persons with a history of violent
 12 behavior, under indictment for a crime of violence or a weapons offense, or convicted within the
 13 previous five years of: (a) use, possession, or sale of any narcotic or dangerous drug; (b) assault
 14 or threats; (c) two or more impaired driving offenses; (d) intrafamily offenses punishable as
 15 misdemeanors; or (e) stalking. D.C. Code § 7-2502.03(a)(2)–(4).

16 172. The District of Columbia also prohibits the registration of certain types of
 17 firearms, including “unsafe” pistols, assault weapons, and .50 caliber firearms. D.C. Code §§ 7-
 18 2502.02, 7-2501.01(3A)(A) (defining “assault weapon”).

19 173. One of the cornerstones of the District of Columbia’s firearms regulatory
 20 structure is the use of background checks. All persons seeking to register a firearm (or obtain a
 21 license to carry concealed) are subject to background checks. D.C. Code § 7-2502.04(a); § 22-
 22 4506. The purpose of the background check is simple and obvious: to ensure that persons
 23 prohibited by law from possessing firearms are unable to do so.

24
 25

¹⁵ Registration is a prerequisite to firearm possession and carrying in the District of Columbia. D.C. Code
 26 § 7-2502.01(a). See also D.C. Code § 22-4504 (license required to carry firearm within the District “either openly
 or concealed”).

1 174. The Final Rules effectively deregulating 3D-printable gun files quite literally
 2 nullify the District of Columbia's laws prohibiting certain categories of persons from possessing
 3 firearms.

4 175. If the Final Rules enter into effect, the District of Columbia stands to suffer
 5 extreme and irreparable harm. Persons ineligible to possess firearms under District of Columbia
 6 law will easily be able to obtain downloadable guns that they can produce at home using a 3D
 7 printer, and even produce guns which are explicitly prohibited in the District because they are
 8 assault weapons such as the AR-15. See D.C. Code Sec. 7-2501.01(3A)(A) (defining assault
 9 weapons). District of Columbia law enforcement will have no means of detecting such weapons
 10 using standard equipment such as metal detectors, and no means of tracing such weapons
 11 because they have no serial numbers. In sum, the Government's actions are an extreme
 12 infringement on the District of Columbia's right to enact and enforce its public safety laws.

13 176. Since the filing of the complaint in the prior *Washington* matter, the District
 14 enacted the Firearms Safety Omnibus Amendment Act of 2018, codified at D.C. Code Sec. 7-
 15 2502.03 *et seq.* (eff. May 10, 2019), which, in addition to prohibiting the possession of "bump
 16 stocks," created a judicial process to allow persons to petition the Superior Court of the District
 17 of Columbia for an "extreme risk protection order," which would prohibit the possession of
 18 firearms by anyone "who poses a significant danger of causing bodily injury to self or others."

19 177. The Council of the District of Columbia has also introduced, but not yet passed,
 20 the Ghost Guns Prohibition Amendment Act of 2019, Bill 23-0018, which would prohibit the
 21 manufacture, sale, or possession of firearms that cannot be detected by metal detectors.

22 **7. Hawaii's Firearms Laws**

23 178. Hawaii's firearm death rate—2.5 deaths per 100,000 persons in 2017—is very
 24 low compared to other states, and Hawaii's extensive scheme of firearm regulation is likely part
 25 of the reason. *See* National Center for Health Statistics, Firearm Mortality by State,
 26 https://www.cdc.gov/nchs/pressroom/sosmap/firearm_mortality/firearm.htm. Hawaii law

1 requires persons to obtain a permit prior to acquiring a firearm by purchase, gift, inheritance,
 2 bequest, or in any other manner. Hawaii Revised Statutes (“HRS”) § 134-2(a) (2011 & Supp.
 3 2018). The process to obtain a permit involves a 14-day waiting period, a criminal background
 4 check, fingerprinting and photographing, disclosure of the applicant’s name, address, sex, height,
 5 weight, date of birth, place of birth, country of citizenship, social security number, alien or
 6 admission number, and information regarding the applicant’s mental health history.
 7 HRS § 134-2(b) & (e). The applicant must sign a waiver allowing access to the applicant’s
 8 mental health records. HRS § 134-2(c). The applicant generally must be 21 years of age or more.
 9 HRS § 134-2(d). Prior to receiving a permit for a pistol or revolver, the applicant must complete
 10 an approved hunter education course or a firearm safety or training course. HRS § 134-2(g).

11 179. Hawaii law also requires firearms brought into the state and firearms acquired
 12 in-state pursuant to HRS § 134-2 to be registered within five days of arrival or acquisition. HRS
 13 § 134-3(a) & (b). The following information must be provided during registration: the name of
 14 the manufacturer and importer; model; type of action; caliber or gauge; serial number; and
 15 source, including name and address of the prior registrant. HRS § 134-3(b). If the firearm does
 16 not have a serial number, the permit number must be engraved upon the receiver portion of the
 17 firearm. *Id.* The person registering is subject to fingerprinting and photographing, as well as a
 18 criminal background check. HRS § 134-3(a).

19 180. Hawaii law prohibits possession of firearms and ammunition by certain classes
 20 of individuals, including: fugitives from justice; persons prohibited from possessing firearms or
 21 ammunition under federal law; persons under indictment or complaint; convicted felons; persons
 22 convicted of a crime of violence or illegal sale of drugs; persons under treatment for addiction
 23 to drugs or alcohol; persons acquitted of a crime by reason of mental disease, disorder, or defect;
 24 persons diagnosed with a significant behavioral, emotional, or mental disorder, or treated for
 25 organic brain syndromes; certain persons under age 25 who were adjudicated by the family court;
 26 minors under treatment for addiction to drugs or alcohol, who are fugitives from justice, or who

1 were found not responsible due to mental disease, disorder, or defect; and persons subject to a
 2 restraining order or order for protection. HRS § 134-7(a)-(e).

3 181. Hawaii law also prohibits certain classes of firearms and firearm components,
 4 including: assault pistols, automatic firearms, short-barreled rifles, sawed-off shotguns, mufflers,
 5 silencers, bump stocks, multiburst trigger activators, trigger cranks, and large capacity
 6 magazines for pistols in excess of 10 rounds. HRS §§ 134-8 & 134-8.5.

7 182. Hawaii law further enables the seizure of firearms upon disqualification: HRS
 8 § 134-13 (revocation of any permit or license by issuing authority or by a court for good cause);
 9 HRS § 134-7(f) (restraining order may include immediate surrender of firearms); HRS § 134-7.3
 10 (seizure upon admission to psychiatric facility or emergency or involuntary hospitalization);
 11 HRS § 134-7.5 (immediate seizure of firearms in domestic abuse situations by responding police
 12 officers). Hawaii law also authorizes issuance of gun violence protective orders. 2019 Haw.
 13 Sess. Laws Act 150, § 2 at 527-33 (effective Jan. 1, 2020).

14 183. All of these regulations could be circumvented and effectively nullified if Firearm
 15 Files to produce firearms on 3D printers proliferate. Hawaii's strong interest in protecting public
 16 safety will be severely harmed. Hawaii's sovereign interest in enforcing its own laws will also
 17 be impaired.

18 8. Illinois's Firearms Laws

19 184. The State of Illinois recognizes that regulation of the possession, carriage, sale,
 20 transfer, and manufacture of firearms is vital to promote and protect the health, safety, and
 21 welfare of the public. *See Horsley v. Trame*, 808 F.3d 1126, 1132 (7th Cir. 2015) ("[I]t is clear
 22 that Illinois has an important and compelling interest in its citizens' safety" and in "protecting
 23 the public from firearms violence."). Illinois has exercised its police power and enacted a
 24 comprehensive regulatory and criminal scheme governing the possession and acquisition of
 25 firearms, *see* 430 ILCS 65/0.01 *et seq.*, 720 ILCS 5/24-1; the public carriage of firearms, *see* 430
 26 ILCS 66/1 *et seq.*, 720 ILCS 5/24-1; the sale, delivery, or manufacture of firearms, *see* 720 ILCS

1 5/24-1, 24-3; and reporting of information regarding the use of firearms in crimes, *see* 5 ILCS
 2 830/10-5.

3 185. The Illinois Firearm Owner's Identification Card Act establishes a licensure
 4 system that identifies persons who are not qualified to possess firearms within the State. Among
 5 other reasons, an individual is ineligible for a license to possess a firearm if he has been convicted
 6 of a felony, has been a patient in a mental health facility within the past five years, is subject to
 7 an existing order of protection prohibiting him from possessing a firearm, has been convicted of
 8 battery, assault, or aggravated assault within the last five years, has been convicted of domestic
 9 battery, has been involuntarily admitted into a mental health facility, is a person with an
 10 intellectual or developmental disability, or is prohibited from possessing or acquiring firearms
 11 by any Illinois or federal statute. 430 ILCS 65/4, 65/8. If an individual becomes ineligible during
 12 the licensure period, the Illinois State Police shall revoke his license and require him to disclose
 13 and dispose of the firearms in his possession. 430 ILCS 65/8, 65/9.5. To ensure continued
 14 compliance with these eligibility requirements, Illinois imposes notification requirements on
 15 circuit court clerks, medical professionals, law enforcement officers, certain state officials, and
 16 school administrators. 430 ILCS 65/8.1. Furthermore, the Illinois Firearms Restraining Order
 17 Act authorizes courts to issue emergency and six-month firearms restraining orders to
 18 temporarily limit individuals' access to firearms whenever someone has been shown to "pose[] a
 19 significant danger of personal injury to himself, herself, or another by having in his or her
 20 custody or control, purchasing, possessing, or receiving a firearm." 430 ILCS 67/40(e)–(g).

21 186. The Illinois Firearm Concealed Carry Act is a comprehensive statutory licensure
 22 regime for public carriage of firearms. In addition to satisfying enumerated eligibility
 23 requirements, applicants for this license must not pose a danger to themselves, others, or the
 24 public safety, and law enforcement agencies may submit objections to applicants on these
 25 grounds. 430 ILCS 66/10, 66/15, 66/25. As part of the licensure process, the applicant must
 26 complete a firearms training course and the Illinois State Police conducts a comprehensive

1 background search of the applicant. 430 ILCS 66/35, 66/75. Additionally, Illinois will issue a
 2 concealed carry license to nonresidents only if their home States have a regulatory scheme
 3 governing ownership, possession, and carriage that is substantially similar to the regime
 4 established in Illinois. 430 ILCS 66/40(b). As part of its comprehensive scheme, Illinois law
 5 restricts the places where a firearm may be legally carried by a licensee. 225 ILCS 10/7; 430
 6 ILCS 66/65; 720 ILCS 5/24-1(a)(10); 89 Ill. Admin. Code § 402.8(i).

7 187. Illinois also regulates the sale and delivery of firearms, requiring a waiting period
 8 after an application to purchase a firearm has been made; restricting the sale of firearms to
 9 minors, individuals with certain criminal convictions, individuals addicted to narcotics,
 10 individuals who have been a patient in a mental health institution in the last five years, and
 11 individuals with an intellectual disability; and prohibiting the sale of firearms containing parts
 12 from certain nonhomogeneous metals. 720 ILCS 5/24-3. Illinois also licenses firearm dealers,
 13 who must provide annual training to employees, 430 ILCS 68/5-30, have video surveillance in
 14 gun stores, 430 ILCS 68/5-50(a), and submit to unannounced inspection by the State Police and
 15 local law enforcement, 430 ILCS 68/5-35. Dealers must also copy a buyer's or transferee's photo
 16 identification card whenever a firearm sale transaction takes place and record the sale. 430 ILCS
 17 68/5-20(a).

188. Illinois law further provides that it is a felony to manufacture machine guns, rifles
 19 and shot guns of a certain length, and certain types of ammunition. 720 ILCS 5/24-1(a)(7), 24-
 20 2.2.

189. Additionally, Illinois promotes public health, safety, and welfare by requiring
 20 public reporting on "key information related to firearms used in the commission of crimes in this
 21 State, including, but not limited to: reports on crimes committed with firearms, locations where
 22 the crimes occurred, the number of persons killed or injured in the commission of the crimes,
 23 the state where the firearms used originated, the Federal Firearms Licensee that sold the firearm,
 24 and the type of firearms used." 5 ILCS 830/10-5.

1 190. Defendants' actions severely undermine Illinois's ability to enforce this
 2 comprehensive regulatory and criminal regime regarding the possession, carriage, sale, and
 3 manufacture of firearms. Persons currently prohibited from acquiring and possessing firearms
 4 would be able to circumvent Illinois law by printing a gun on a 3D printer, seriously harming
 5 Illinois's interest in a well-regulated firearms market and posing an unacceptable risk to Illinois
 6 public health, safety, and welfare.

7 **9. Maine's Firearms Laws**

8 191. The State of Maine, represented by and through its Attorney General, is a
 9 sovereign state of the United States of America. The Attorney General of Maine is a
 10 constitutional officer with the authority to represent the State of Maine in all matters and serves
 11 as its chief legal officer with general charge, supervision, and direction of the State's legal
 12 business. Me. Const. art. IX, Sec. 11; 5 M.R.S. §§ 191 *et seq.* (2018). The Attorney General's
 13 powers and duties include acting on behalf of the State and the people of Maine in the federal
 14 courts on matters of public interest. The Attorney General has the authority to file suit to
 15 challenge action by the federal government that threatens the public interest and welfare of
 16 Maine residents as a matter of constitutional, statutory, and common law authority.

17 192. Maine's statutory framework of firearm regulation imposes reasonable
 18 restrictions on the possession of firearms in order to protect public safety consistent with the
 19 rights of law-abiding citizens to possess and use firearms. Maine attempts to ensure consistency
 20 in its firearms regulation across the state by largely preempting the field of firearms regulation
 21 within the State. 25 M.R.S. § 2011. Maine promotes public safety by prohibiting the possession
 22 of firearms by persons who, for various reasons, should not have access to them.

23 193. Prohibitions resulting from convictions. Maine prohibits possession by persons
 24 convicted of felony-level crimes in the courts of Maine, its sister states, and the federal court.
 25 Maine also prohibits possession based on convictions in state, federal or tribal courts of
 26 misdemeanor-level crimes involving the use of a firearm or other dangerous weapon against a

1 person. 15 M.R.S. § 393(1)(A-1)(5). A finding of not criminally responsible on any of these
 2 crimes also results in prohibition. 15 M.R.S. § 393(1)(A-1), (E). Maine prohibitions based on
 3 domestic violence convictions go beyond those of the federal statute, which prohibit possession
 4 based on conviction of domestic violence assault, in that Maine's statute also creates a five-year
 5 prohibition based on convictions for domestic violence stalking, terrorizing, criminal threatening
 6 and reckless conduct. In addition, a person who is on deferred disposition status for any of these
 7 crimes is prohibited from possessing firearms. 15 M.R.S. § 393(1-B).

8 194. Juvenile Adjudications. Maine's prohibitions based on juvenile adjudications
 9 may be permanent or temporary (non-violent felony-level adjudications), and thus again go
 10 beyond those of federal law, which require a conviction. 15 M.R.S. § 393(1)(C), (1-A); 18 U.S.C
 11 § 922(g).

12 195. Mental Health-Related Prohibitions. Maine's prohibitions based on mental health
 13 adjudications are comprehensive. In addition to the prohibition based on "insanity" findings in
 14 criminal proceedings, Maine has established prohibitions for criminal defendants determined
 15 incompetent to stand trial, 15 M.R.S. § 393(1)(E)(3); persons involuntarily committed through
 16 the civil process, 15 M.R.S. § 393(1)(E)(3); persons ordered to involuntary treatment as part of
 17 a "progressive treatment program," P.L. 209, c. 411, 15 M.R.S. § 393(1)(E-2) (effective July 1,
 18 2020); and persons taken into protective custody and prohibited pursuant to the extreme risk
 19 protection order process. P.L. 2019, c. 411, 15 M.R.S. § 393(1)(E-1) (effective July 1, 2020).

20 196. Status Prohibitions. In addition, Maine tracks federal prohibitions against
 21 possession, including those based on fugitive status, whether a person is an unlawful user or
 22 addicted to controlled substances or illegally in the United States, or has been dishonorably
 23 discharged or renounced citizenship. 15 M.R.S. § 393 (1)(F)-(J). Maine prohibits possession for
 24 persons subject to qualifying protection from abuse orders. 15 M.R.S. § 393(1)(D); 19-A M.R.S.
 25 §§ 4006, 4007, 4011. Possession of a firearm in violation of a bail condition prohibiting
 26

1 possession, where premised on an underlying felony-level offense, is itself a Class C (felony-
 2 level) crime. 15 M.R.S. § 1092(1)(B).

3 197. Regulation of Transfer and Location. Generally, it is a crime to transfer a firearm
 4 to a minor under 16 or to transfer a handgun to a minor under 18, with some limited exceptions.
 5 17-A M.R.S. §§ 554-A, 554-B. Again, with very limited exceptions, firearms may not be
 6 possessed on school property, 20-A M.R.S. § 6552, in courthouses. 17-A M.R.S. § 1058, or at
 7 the site of a labor dispute. 32 M.R.S. § 9412. While Maine does not generally require permits to
 8 carry, a concealed handgun permit is required to carry in certain locations, including Maine State
 9 Parks, 12 M.R.S. § 1803, and Acadia National Park. 12 M.R.S. § 756. The qualifications for
 10 obtaining a concealed handgun permit, 25 M.R.S. § 2003, are more stringent than the law
 11 governing possession and open carry. 15 M.R.S. § 393. Federally licensed firearms dealers must
 12 provide safety brochures and make available information about trigger locks and firearms safety
 13 programs. 25 M.R.S. § 2012.

14 198. Maine's regulatory framework would be seriously circumvented if the Final
 15 Rules are permitted to stand. Persons ineligible to possess firearms under Maine law will easily
 16 be able to obtain downloadable plans for guns that they can produce at home using a 3D printer.
 17 Such firearms easily sidestep the Maine law criminalizing removal of serial numbers to prevent
 18 identification by simply not having serial numbers in the first place. 17-A M.R.S. § 705(1)(E).
 19 Further, absent any meaningful restrictions on exporting Firearm Files, foreign persons who may
 20 reside in or may enter Maine through its approximately two dozen border crossings stretching
 21 across its 611-mile land border with Canada or two international airports will have unrestricted
 22 access to Firearm Files. It will be increasingly difficult for Maine law enforcement and Border
 23 Patrol agents to detect and trace weapons constructed from such plans because they have no
 24 serial numbers and lack metal components typically detectable by security screening equipment.

1 **10. Maryland's Firearms Laws**

2 199. The State of Maryland has one of the most robust firearms regulatory regimes in
 3 the country. For instance, Maryland prohibits certain categories of persons from buying or
 4 possessing a firearm. This includes minors under the age of 21, and persons previously convicted
 5 of certain serious crimes, including crimes of violence. Md. Code Ann., Pub. Safety § 5-133.
 6 Persons who have been involuntarily committed to a mental health facility, or are under the
 7 protection of a court-appointed guardian, or have been found incompetent to stand trial, or are
 8 addicted to a controlled dangerous substance, or are subject to a protective order are all
 9 prohibited from possessing a firearm as well. *Id.*

10 200. Sales and other transfers of firearms in Maryland are extensively regulated to
 11 ensure that prohibited persons are unable to obtain a weapon. A person seeking to purchase, rent,
 12 or receive a handgun must first obtain a handgun qualification license. Md. Code Ann., Pub.
 13 Safety § 5-117.1. To obtain such a license, applicants must, among other things, make a sworn
 14 statement that they are not prohibited under federal or State law from possessing a handgun, pass
 15 a fingerprint-based background check, and complete an approved firearms safety training course.
 16 *Id.* Further, a person must submit a firearm application before the person purchases, rents, or
 17 transfers a handgun in Maryland. Md. Code Ann., Pub. Safety §§ 5-117, 5-118. That transaction
 18 must be executed within 90 days of the application's approval and must be reported to the State
 19 Police, including a description of the firearm and its serial number. Md. Code Ann., Pub. Safety
 20 § 5-123. Firearm dealers are required to maintain records of every transaction, including the
 21 name and address of the purchaser, a precise description, including make, model, caliber, and
 22 serial number of each firearm acquired or sold, and the date of sale. Md. Code Ann., Pub. Safety
 23 § 5-145. Further, persons moving to Maryland from out-of-state must register their firearms with
 24 the State Police, which requires the applicant to submit information such as their name, address,
 25 and Social Security number, as well as the make, model, and manufacturer's serial number of
 26 the firearm. Md. Code Ann., Pub. Safety § 5-143.

1 201. Maryland also prohibits the possession of certain types of firearms. Enumerated
 2 assault weapons, including assault pistols, may not be bought, possessed, sold, or transported
 3 into the State. Md. Code Ann., Crim. Law § 4-303. Detachable magazines with a capacity of
 4 more than ten rounds of ammunition are also prohibited from being manufactured, bought, or
 5 sold. Md. Code Ann., Crim. Law § 4-305.

6 202. Maryland's carefully constructed regulatory regime will be upended if the Final
 7 Rules are permitted to go into effect. Persons currently prohibited from possessing firearms
 8 would be able to easily circumvent Maryland law by simply manufacturing a gun on a 3D printer.
 9 The firearms thus produced will be unregistered, unmarked, and virtually untraceable, directly
 10 harming Maryland's interest in a well-regulated firearms market and potentially leading to an
 11 increase in violent crime.

12 **11. Massachusetts's Firearms Laws**

13 203. Massachusetts carefully regulates the possession, licensing, and use of firearms
 14 and other inherently dangerous weapons. Among the goals of these laws is limiting access to
 15 deadly weapons by persons who may inflict harm—be it negligently or intentionally—on
 16 themselves or others. These laws also recognize that criminal use of firearms is a significant
 17 problem, that guns should be registered and traceable in the event of theft or criminal misuse,
 18 and that possession of firearms should be limited to responsible persons who meet all
 19 requirements for licensure. *See, e.g., Commonwealth v. Reyes*, 464 Mass. 245, 250 (2013); *Jupin*
 20 *v. Kask*, 447 Mass. 141, 153-154 (2006).

21 204. Under Massachusetts law,¹⁶ a person may not possess or carry a firearm without
 22 obtaining a license from the appropriate licensing authority. Persons may not obtain a license to
 23 carry a firearm if they: (1) have committed certain offenses, including violent crimes and
 24 violations of laws regulating the use, possession, or sale of a controlled substance; (2) have been

25

¹⁶ The Massachusetts-specific allegations contained herein constitute a summary of some of the most
 26 relevant provisions of Massachusetts law. It is not an exhaustive or complete list of all relevant statutes, regulations,
 or other provisions.

1 committed to a hospital or institution for mental illness, or alcohol or substance misuse, subject
 2 to limited exceptions; (3) were younger than 21 years old at the time of submitting an application;
 3 (4) are currently subject to an order for suspension or surrender of firearms in connection with
 4 an abuse prevention order; (5) have an outstanding arrest warrant in any state or federal
 5 jurisdiction; (6) have been dishonorably discharged from the armed forces of the United States;
 6 (7) are a fugitive from justice; or (8) have renounced their United States citizenship. Mass. Gen.
 7 Laws ch. 140, § 131(d).

8 205. A licensing authority also may deny a person a license to carry firearms if the
 9 licensing authority determines that the person is unsuitable for a license based on: (i) reliable
 10 and credible information that the applicant or licensee has exhibited or engaged in behavior that
 11 suggests that, if issued a license, the applicant or licensee may create a risk to public safety; or
 12 (ii) existing factors that suggest that, if issued a license, the applicant or licensee may create a
 13 risk to public safety. Mass. Gen. Laws ch. 140, § 131(d).

14 206. Anyone who wishes to sell, rent, or lease firearms must apply for and obtain a
 15 license. Such licenses are valid for three years. No license may issue until an investigation into
 16 the applicant's criminal history has been completed. A licensee must record all sales of firearms
 17 to include a complete description of the firearm (including the make and type of firearm) and the
 18 person purchasing the firearm (including the person's sex, residence, and occupation). The police
 19 may inspect the premises of a licensee at all times. Mass. Gen. Laws ch. 140, §§ 122-124.
 20 Reports of all transactions must be made by licensees to Massachusetts's Department of Criminal
 21 Justice Information Services with detailed information about the firearm and the purchaser's
 22 license. 803 Mass. Code Regs. § 10.07.

23 207. It is unlawful to manufacture a firearm in Massachusetts, or to deliver a firearm
 24 to a dealer in Massachusetts, without a serial number permanently inscribed on a visible metal
 25 surface of the firearm. Mass. Gen. Laws ch. 269, § 11E.

1 208. Anyone who purchases or obtains a firearm from any source other than a licensed
 2 dealer must, within seven days of receiving the firearm, report in writing to the Commissioner
 3 of the Massachusetts Department of Criminal Justice Information Services the name and address
 4 of the seller or donor and the buyer or donee, together with a complete description of the firearm,
 5 including the caliber, make, and serial number. Mass. Gen. Laws ch. 140, § 128B.

6 209. Only handguns that meet the safety and performance standards expressed in state
 7 law and regulations, including protection against accidental discharge and explosion upon firing,
 8 may be sold. Mass. Gen. Laws ch. 140D, § 123, clauses 18 to 20. The Secretary of the
 9 Massachusetts Executive Office of Public Safety and Security has compiled an approved
 10 firearms roster, pursuant to Mass. Gen. Laws ch. 140, § 131-3/4 and 501 Mass. Code Regs. 7.00.

11 210. It is unlawful to sell, offer for sale, transfer, or possess any weapon, capable of
 12 discharging a bullet or shot, that is not detectable as a weapon or potential weapon by x-ray
 13 machines commonly used at airports or walk-through metal detectors. Mass. Gen. Laws ch. 140,
 14 § 131N.

15 211. The sale, transfer, or possession of an “Assault weapon,” as defined in Mass. Gen.
 16 Laws ch. 140, § 121, is prohibited. Mass. Gen. Laws ch. 140, § 131M.

17 212. All firearms that are used in the commission of a crime must be traced by the
 18 licensing authority for the city or town in which the crime took place. Mass. Gen. Laws ch. 140,
 19 § 131Q.

20 **12. Michigan’s Firearms Laws**

21 213. Michigan regulates the sale, purchase, possession, and carrying of certain
 22 firearms within the state. As a general rule, a person may not purchase, carry, possess, or
 23 transport a pistol in Michigan without first obtaining a license for the firearm. Mich. Comp. Laws
 24 § 28.422(2).

25 214. Before issuing a license to purchase or possess a pistol, the issuing agency must
 26 determine through the federal National Instant Criminal Background Check System that the

1 applicant is not prohibited under federal law from possessing a firearm and is not an illegal or
 2 nonimmigrant alien. Mich. Comp. Laws § 28.426(1). An applicant for licensure must be a legal
 3 resident of Michigan; a United States citizen or lawfully admitted alien; and at least 21 years of
 4 age, or at least 18 years old if the seller is a federally licensed dealer. Mich. Comp. Laws
 5 § 28.422. An applicant must not be prohibited from possessing a firearm under Michigan's felon-
 6 in-possession statute; must not have a pending felony or enumerated misdemeanor charge; must
 7 not be subject to an involuntary hospitalization or commitment order, personal protection order,
 8 or order finding the individual is legally incapacitated; and must not have been adjudged insane
 9 or legally incapacitated unless adjudged restored to sanity or capacity by court order. *Id.*

10 215. In addition to prohibiting certain individuals from possessing firearms, the State
 11 of Michigan prohibits certain types of weapons. For example, it generally is illegal in Michigan
 12 to manufacture or possess a machine gun, muffler, or silencer. Mich. Comp. Laws
 13 § 750.224(1). Michigan law also makes it a felony to manufacture or possess a device to convert
 14 a semiautomatic into a fully automatic firearm, or to demonstrate to another person how to
 15 manufacture or install such a device. Mich. Comp. Laws § 750.224e. Michigan law similarly
 16 prohibits the manufacture or possession of short-barreled shotguns and rifles, except in
 17 compliance with federal law. Mich. Comp. Laws § 750.224b. Further, a person may lawfully
 18 possess a pistol greater than 26 inches in length only if the firearm was continuously registered
 19 since January 1, 2013. Mich. Comp. Laws § 28.421.

20 **13. Minnesota's Firearms Laws**

21 216. In the exercise of its police powers, the State of Minnesota has regulated firearms
 22 in the interest of public safety.

23 217. For example, Minnesota law prohibits some people from using or possessing
 24 firearms, including certain individuals who have been convicted of a felony; have a mental
 25 illness or developmental disability; have been convicted of controlled substance crimes; have
 26 been committed to a treatment facility due to chemical dependency; have been convicted of

1 domestic-violence-related crimes; or are subject to an order for protection. Minn. Stat.
 2 § 624.713, subd. 1. It is also unlawful to knowingly transfer a firearm to such persons.
 3 Minn. Stat. §§ 624.7133, 624.7141.

4 218. Minnesota similarly regulates the sale or transfer of certain firearms. For
 5 example, an individual seeking to acquire a firearm may apply for a transferee permit by
 6 providing personal information to local law enforcement. Minn. Stat. § 624.7131, subd. 1. Local
 7 law enforcement then conducts a background check to ensure that the individual is not prohibited
 8 from possessing a firearm. *Id.*, subd. 2, 4. Within seven days, law enforcement will either issue
 9 a transferee permit or provide written notification that the application has been denied with the
 10 specific reason for the denial. *Id.*, subd. 5.

11 219. If the proposed purchaser of certain firearms does not have a transferee permit,
 12 the proposed seller and the prospective buyer must submit a report to local law enforcement with
 13 personal information of the proposed transferee and the address of the seller's business. Minn.
 14 Stat. § 624.7132, subd. 1. Local law enforcement then conducts a background check to ensure
 15 that the individual is not prohibited from possessing a firearm. *Id.*, subd. 2-3. The seller may not
 16 transfer the firearm to the buyer for at least five business days after the report is delivered to
 17 local law enforcement. *Id.*, subd. 4.

18 220. Minnesota also regulates the carrying of firearms in public. For example, subject
 19 to some exceptions, rifles, shotguns, and semiautomatic military-style assault weapons cannot
 20 be carried in public places. Minn. Stat. § 624.7181. And pistols may not be carried in public
 21 without a permit to carry. Minn. Stat. § 624.714, subd. 1. Applications for permits to carry are
 22 submitted in person to local law enforcement. *Id.*, subd. 2-3. The applicant must be at least 21
 23 years old, trained in the safe use of a pistol, not prohibited from possessing a firearm, not listed
 24 in the criminal gang investigative data system, and not a danger to themselves or the public. *Id.*;
 25 Minn. Stat. § 624.714, subd. 6(a)(3). The applicant must also provide personal information, a
 26 photocopy of their training certificate, and a photo identification. *Id.*, subd. 3(a), (c). Local law

1 enforcement then conducts a background check to ensure that the individual is not prohibited
 2 from possessing a firearm. *Id.*, subd. 4.

3 221. Even with a permit to carry, an individual carrying a firearm may not remain in a
 4 private establishment if they know that the establishment has made a reasonable request that
 5 firearms not be brought onto the premises. *Id.*, subd. 17. Employers and educational institutions
 6 may also restrict the carrying or possession of firearms. *Id.*, subd. 18. Individuals also may not
 7 carry while under the influence of alcohol or controlled substances. Minn. Stat. § 624.7142.

8 222. In addition, Minnesota prohibits certain firearms, like for example, machine guns,
 9 short-barreled shotguns, and Saturday night special pistols, which are pistols made with material
 10 that has a melting point of less than 1,000 degrees Fahrenheit, material that has an ultimate tensile
 11 strength of less than 55,000 pounds per square inch, or powdered metal having a density of less
 12 than 7.5 grams per cubic centimeter. Minn. Stat. § 609.67; Minn. Stat. § 624.712, subd. 4;
 13 Minn. Stat. § 624.716.

14 223. Proliferation of untraceable, undetectable 3D printed guns is a threat to public
 15 safety in Minnesota. By allowing this proliferation, Defendants undermine Minnesota's firearm
 16 laws and the safety of Minnesota residents.

17 **14. New Jersey's Firearms Laws**

18 224. New Jersey not only has statutes related to the purchase and possession of guns,
 19 but also laws relating to who can manufacture firearms. In New Jersey, under N.J. Stat. Ann. §
 20 2C:39-9, it is illegal to manufacture a weapon without being registered or licensed to do so. And
 21 N.J. Stat. Ann. § 2C:39-10 makes it a crime to knowingly violate the regulatory provision
 22 relating to the manufacturing of firearms in N.J. Stat. Ann. § 2C:58-1, which provides that every
 23 manufacturer of firearms shall register with the proper State authorities.

24 225. New Jersey's firearms regulatory regime expressly restricts both the use of 3D
 25 printers to produce firearms and the distribution of digital instructions to facilitate such
 26 production. New Jersey recently amended its firearms laws to prohibit the distribution of "digital

1 instructions in the form of computer-aided design files or other code or instructions stored and
 2 displayed in electronic format as a digital model that may be used to program a three-dimensional
 3 printer to manufacture or produce a firearm, firearm receiver, magazine, or firearm component”
 4 to any person in New Jersey who is not a licensed firearms manufacturer. N.J. Stat. Ann. § 2C:39-
 5 9(l)(2). It is also now illegal in New Jersey for a person who is not a licensed firearms
 6 manufacturer “to use a three-dimensional printer or similar device to manufacture or produce a
 7 firearm, firearm receiver, magazine, or firearm component.” N.J. Stat. Ann. § 2C:39-9(l)(1). And
 8 under N.J. Stat. Ann. §§ 2C:39-9(n) and 2C:39-3(n), it is illegal in New Jersey to transport or
 9 knowingly possess a firearm manufactured or otherwise assembled using a firearm frame or
 10 firearm receiver which is not marked with a serial number registered to a federally licensed
 11 manufacturer.

12 226. New Jersey also has an extensive system of rules for people purchasing firearms.
 13 A person must obtain a firearms purchaser identification card before purchasing, receiving, or
 14 otherwise acquiring a firearm. Under N.J. Stat. Ann. § 2C:58-3(c), the following people are
 15 prohibited from obtaining a purchaser identification card, and thus prohibited from purchasing
 16 firearms: those who have been convicted of crimes and disorderly persons offenses involving
 17 acts of domestic violence (N.J. Stat. Ann. § 2C:58-3(c)(1)); those who are drug dependent (N.J.
 18 Stat. Ann. § 2C:58-3(c)(2)); those who are confined for mental disorders to hospitals, mental
 19 institutions or sanitariums (N.J. Stat. Ann. § 2C:58-3(c)(2)); those who suffer from a physical
 20 defect or disease that would make it unsafe for him to handle firearms (N.J. Stat. Ann. § 2C:58-
 21 3(c)(3)); those who have been confined for a mental disorder (N.J. Stat. Ann. § 2C:58-3(c)(3));
 22 those who are alcoholics and are unable to produce proof demonstrating that they no longer
 23 suffer from that particular disability in a manner that would interfere with or handicap them in
 24 the handling of firearms (N.J. Stat. Ann. § 2C:58-3(c)(3)); juveniles (N.J. Stat. Ann. § 2C:58-
 25 3(c)(4)); those for whom the issuance of a permit to purchase a handgun or firearms purchaser
 26 identification card would not be in the interests of the public health, safety, or welfare (N.J. Stat.

1 Ann. § 2C:58-3(c)(5)); those who are subject to restraining orders issued pursuant to the
 2 “Prevention of Domestic Violence Act” prohibiting them from possessing firearms (N.J. Stat.
 3 Ann. § 2C:58-3(c)(6)); those who were adjudicated delinquent for offenses which, if committed
 4 by an adult, would constitute a crime involving the unlawful use or possession of weapons,
 5 explosives, or destructive devices (N.J. Stat. Ann. § 2C:58-3(c)(7)); those who had a firearm
 6 seized pursuant to the Prevention of Domestic Violence Act (N.J. Stat. Ann. § 2C:58-3(c)(8));
 7 and those who are named on the consolidated Terrorist watchlist maintained by the Terrorist
 8 Screening Center administered by the Federal Bureau of Investigation (N.J. Stat. Ann. §
 9 2C:58-3(c)(9)). And New Jersey bans all assault weapons. N.J. Stat. Ann. § 2C:39-5(f).

10 227. Finally, New Jersey law prohibits “certain persons” from purchasing, owning,
 11 possessing, or controlling any and all firearms under N.J. Stat. Ann. § 2C:39-7(b)(1), due to their
 12 prior convictions for aggravated assault, arson, burglary, escape, extortion, homicide,
 13 kidnapping, robbery, aggravated sexual assault, sexual assault, bias intimidation, carjacking,
 14 gang criminality, racketeering, terroristic threats, unlawful possession of a machine gun,
 15 handgun, or assault firearm, leading a firearms trafficking network, endangering the welfare of
 16 a child, stalking, or a crime involving domestic violence, or for an attempt or conspiracy to
 17 commit any of these offenses. Those persons face a mandatory term of imprisonment with at
 18 least five years of parole ineligibility if they purchase, own, possess, or control a firearm. N.J.
 19 Stat. Ann. § 2C:39-7(b)(1).

20 228. The Final Rules at issue will permit the unchecked dissemination of Firearm Files
 21 in New Jersey, and thus effectively sanction conduct that is specifically prohibited by New Jersey
 22 law. The Final Rules will also facilitate the unlicensed production of 3D-printed firearms in
 23 direct violation of New Jersey law. Further, the Final Rules will enable any individual with
 24 access to a 3D printer to easily circumvent New Jersey laws which require every firearms
 25 manufacturer to register with the State and every person to obtain a firearms purchase
 26 identification card before acquiring a firearm. The Final Rules will also make it easier for certain

1 convicted felons to evade New Jersey's prohibition against their purchasing, owning, possessing,
 2 or controlling any firearm. The Final Rules likewise will make it easier for persons convicted of
 3 acts of domestic violence, persons confined for certain mental illnesses, juveniles, persons from
 4 whom firearms have been seized under the Prevention of Domestic Violence Act, and persons
 5 named on the consolidated Terrorist watchlist to evade New Jersey's prohibitions on their
 6 purchasing firearms. In short, the Final Rules help to effect a complete end-run around New
 7 Jersey restrictions on the manufacture, sale, purchase, and possession of firearms which are
 8 designed to trace and detect firearms and to prevent gun violence in New Jersey.

9 **15. New York's Firearms Laws**

10 229. For over a century, in order to promote public safety, New York law has regulated
 11 the possession and use of guns and has prohibited certain persons from obtaining or possessing
 12 firearms. *See* N.Y. Penal Law §§ 265.00, 265.01, 265.20(a)(3), 400.00; *Kachalsky v. Cty. of*
 13 *Westchester*, 701 F.3d 81, 84 (2012), cert. denied, 133 S. Ct. 1806 (2013). For example,
 14 New York licenses the possession of "firearms," which are defined, as a general matter, as any
 15 pistol or revolver; a shotgun having one or more barrels less than eighteen inches in length; a
 16 rifle having one or more barrels less than sixteen inches in length; and any assault weapon.
 17 *See* N.Y. Penal Law §§ 265.01, 265.20(a)(3), 400.00. These measures remain the law today.

18 230. Licenses are limited "to those over twenty-one years of age, of good moral
 19 character, without a history of crime or mental illness, and 'concerning whom no good cause
 20 exists for the denial of the license.' " *Kachalsky v. County of Westchester*, 701 F.3d 81, 86
 21 (quoting PL § 400.00(1).); N.Y. Penal Law §§ 265.00, 265.01, 265.20(a)(3), 400.00. Persons
 22 subject to a variety of protection orders are also prohibited from maintaining licenses. N.Y. Penal
 23 Law § 400.00(1); NY Criminal Procedure Law § 530.14; Family Court Act §842-a.

24 231. Every license application triggers an investigation into the applicant by local law
 25 enforcement, including an investigation into the applicant's mental health history.
 26 PL § 400.00(4); *Kachalsky*, 701 F.3d at 87. Firearms subject to licensure must be disclosed to

1 and registered with licensing officials. N.Y. Penal Law § 400.00(7) (mandating that each license
 2 “specify the weapon covered by calibre, make, model, manufacturer's name and serial number,
 3 or if none, by any other distinguishing number or identification mark . . .”).

4 232. New York has also enacted specific criminal prohibitions on the possession of
 5 rifles and shotguns by certain mentally ill individuals. N.Y. Penal Law §§ 265.01(6), 265.00(16).
 6 Penal Law § 265.01(6), enacted in 1974, provides that “a person who has been certified not
 7 suitable to possess a rifle or shotgun . . . and refuses to yield possession of such rifle or shotgun
 8 upon the demand of a police officer” is guilty of criminal possession of a weapon in the fourth
 9 degree. *Id.* § 265.01(6). Law enforcement is authorized to take firearms “possessed by such
 10 person.”

11 233. New York’s Secure Ammunition and Firearms Enforcement Act of 2013 (SAFE
 12 Act) generally restricts the transfer and possession of “assault weapons”—defined, as a general
 13 matter, as rifles, shotguns, and pistols that are (1) semiautomatic, (2) in the case of a pistol or
 14 rifle, able to accept a detachable ammunition magazine, and (3) equipped with at least one feature
 15 on an enumerated list of military style features. N.Y. Penal Law § 265.00(22).^[1] Possession of
 16 a prohibited assault weapon constitutes the Class D felony of Criminal Possession of a Weapon
 17 in the Third Degree. *Id.* § 265.02(7)-(8)¹⁷.

18 234. The Final Rules effectively deregulating 3D-printable gun files nullify New
 19 York’s laws prohibiting certain categories of persons from possessing firearms. If the Final Rules
 20 go into effect, New York stands to suffer extreme and irreparable harm. Persons ineligible to
 21 possess firearms under New York law will easily be able to obtain downloadable guns that they
 22 can produce at home using a 3D printer. New York law enforcement will have no means of
 23

24
 25 ¹⁷ The Act does not prohibit possession of any firearm that was lawfully possessed before the law’s
 26 effective date of January 15, 2013. See N.Y. Penal Law § 265.00(22)(g)(v). Persons who lawfully possessed a
 banned assault weapon at that time may continue to do so, but must register the weapon with the Superintendent of
 the State Police. *Id.* § 400.00(16-a).

1 detecting such weapons using standard equipment such as metal detectors, and no means of
 2 tracing such weapons because they have no serial numbers.

3 **16. North Carolina's Firearms Laws**

4 235. North Carolina has a broad statutory scheme to regulate firearms that is intended
 5 to keep firearms out of the hands of persons ineligible to possess them. Unlike other states, North
 6 Carolina also has specific laws precluding the manufacture and possession of a variety of
 7 automatic firearms and firearms that do not have serial numbers or identifying marks. These
 8 firearms are of the type that can be produced on a 3D printer.

9 236. Under North Carolina law, it is unlawful for any person, firm, or corporation to
 10 sell, give away, transfer, purchase, or receive, at any place within the state, any pistol, unless the
 11 purchaser or receiver obtains a license or permit from the sheriff of the county in which the
 12 purchaser or receiver resides, or the purchaser or receiver possesses a valid North Carolina issued
 13 concealed carry permit. This requirement to obtain a permit prior to the transfer of a pistol applies
 14 not only to a commercial transaction, but also between private individuals or companies
 15 throughout North Carolina. A permit expires after five years, and a violation of the pistol permit
 16 law is a Class 2 misdemeanor under North Carolina law. N.C.G.S. § 14-402(a).

17 237. North Carolina law also requires permits to receive or purchase a handgun.
 18 N.C.G.S. § 14-402. The county sheriff is only authorized to issue a permit after a county resident
 19 submits an application establishing that the applicant is of good moral character and that the
 20 person, firm, or corporation wants to possess the weapon for one of the following purposes:

- 21 a. The protection of the applicant's home, business, person, family, or property;
- 22 b. Target shooting;
- 23 c. Collecting; or
- 24 d. Hunting

25 Additionally, the sheriff must conduct a background check to verify, before the issuance of a
 26 permit, that the person is not ineligible to purchase or possess a handgun. N.C.G.S. §14-404(a).

1 238. A handgun permit cannot be issued if the applicant, *inter alia*: (1) has been
 2 convicted in any state or federal court of a felony or has currently pending felony charges; (2) is
 3 a fugitive from justice; (3) is addicted to drugs; (4) has been adjudicated incompetent or
 4 committed to a mental institution; (5) is an alien illegally or unlawfully in the United States;
 5 (6) has been dishonorably discharged from the U.S. armed forces; or (7) is subject to certain
 6 restraining and no-contact orders. N.C.G.S. §14-404(c).

7 239. A court in any domestic violence protective order can also prohibit a party from
 8 possessing, purchasing, or receiving a firearm for a time fixed in the order, the violation of which
 9 is a felony. N.C.G.S. § 50B-3.1.

10 240. Every dealer in pistols and other weapons mentioned in Article 52A of the N.C.
 11 General Statutes must keep accurate records of all sales, including the name, place of residence,
 12 date of sale, etc., of each person, firm, or corporation to whom sales are made. N.C.G.S.
 13 § 14-406, N.C.G.S. § 14-408.

14 241. It is unlawful for any person, firm, or corporation to manufacture, sell, give away,
 15 dispose of, use or possess machine guns, submachine guns, or other like weapons. A machine
 16 gun or submachine gun means any weapon which shoots, is designed to shoot, or can be readily
 17 restored to shoot, automatically more than one shot, without manual reloading, by a single
 18 function of the trigger. This includes the frame or receiver of any such weapon, any combination
 19 of parts designed and intended for use in converting a weapon into a machine gun, and any
 20 combination of parts from which a machine gun can be assembled if such parts are in the
 21 possession or under the control of a person. N.C.G.S. § 14-409.

22 242. It is unlawful for any person to manufacture, assemble, possess, store, transport,
 23 sell, offer to sell, purchase, offer to purchase, deliver, give to another, or acquire any weapon of
 24 mass death and destruction. A weapon of mass death and destruction includes any firearm
 25 capable of fully automatic fire; any shotgun with a barrel length less than eighteen inches, or an
 26 overall length of twenty-six inches; a rifle with a barrel length of less than sixteen inches or an

1 overall length of less than twenty six inches; any muffler or silencer for any firearm, any
 2 combination of parts designed or intended for use in converting a device into any weapon
 3 described above, and from which a weapon of mass death and destruction may readily be
 4 assembled. A device which could convert a semi-automatic firearm into one capable of full
 5 automatic fire would be in violation of this statute. N.C.G.S. § 14-288.8.

6 243. It is unlawful for any person to alter, deface, destroy, or remove the permanent
 7 serial number, manufacturer's identification plate, or other permanent distinguishing number or
 8 identification mark from any firearm with the intent to conceal or misrepresent the identity of
 9 the firearm. Additionally, it is unlawful for any person to knowingly sell, buy, or be in possession
 10 of any firearm on which the permanent serial number, manufacturer's identification plate, or
 11 other permanent distinguishing number or identification mark has been altered, defaced,
 12 destroyed, or removed for the purpose of concealing or misrepresenting the identity of the
 13 firearm. Such a violation is punishable as a felony. N.C.G.S. § 14-160.2.

14 244. North Carolina's compelling state interests in keep the public safe by keeping
 15 guns out of the hands of those ineligible to possess them and to restrict the manufacture and
 16 possession of automatic and untraceable weapons would be irreparably harmed if the federal
 17 government's actions are allowed to stand.

18 **17. Oregon's Firearms Laws**

19 245. Oregon law also limits the availability and manufacture of firearms to protect the
 20 public safety and in the exercise of its police powers. Or. Rev. Stat. § 166.170(1) provides:
 21 “[e]xcept as expressly authorized by state statute, the authority to regulate in any matter
 22 whatsoever the sale, acquisition, transfer, ownership, possession, storage, transportation or use
 23 of firearms or any element relating to firearms and components thereof, including ammunition,
 24 is vested solely in the Legislative Assembly.” Under this authority, the Oregon Legislature
 25 enacted Or. Rev. Stat. § 166.410, which states that “[a]ny person who manufactures or causes to
 26 be manufactured within this state, or who imports into this state, or offers, exposes for sale, or

1 sells or transfers a handgun, short-barreled rifle, short-barreled shotgun, firearms silencer or
 2 machine gun, otherwise than in accordance with [the Oregon statutes] is guilty of a Class B
 3 felony.”

4 246. Thus, Oregon law prohibits certain persons from obtaining or possessing
 5 firearms. For example, Oregon law prohibits certain felons, certain individuals under the
 6 jurisdiction of juvenile court, certain individuals with mental illnesses and certain persons
 7 subject to stalking orders from possessing firearms. Or. Rev. Stat. § 166.250; Or. Rev. Stat.
 8 § 166.255. Under Or. Rev. Stat. § 166.470(1), it is unlawful to knowingly and intentionally sell,
 9 deliver or otherwise transfer a firearm to such persons.

10 247. Oregon law also has set up an extensive system of rules to ensure unauthorized
 11 persons cannot buy firearms. For example, with certain exceptions (for example, transfers to
 12 family members), only a gun dealer may transfer a firearm. Or. Rev. Stat. § 166.435(2). A person
 13 who applies to buy a handgun from a dealer must provide valid government identification
 14 bearing a photograph and date of birth, and the dealer must complete a transaction record with
 15 the signature of the purchaser. This transaction record must include the federal firearms license
 16 number of the dealer, the business name of the dealer, the place of transfer, the name of the
 17 person making the transfer, the make, model, caliber and manufacturer’s number of the handgun
 18 and the type, the social security number of the purchaser, and the issuer and identification
 19 number of the identification presented by the purchaser. The dealer must also obtain the
 20 thumbprints of the prospective purchaser and contact the Department of State Police
 21 (“Department”) to conduct a criminal background check. Or. Rev. Stat. § 166.412; Or. Rev. Stat.
 22 § 166.418.

23 248. Oregon law also requires a request for a criminal background check to transfer a
 24 gun at a gun show. Or. Rev. Stat. § 166.433(2); Or. Rev. Stat. § 166.438.

1 **18. Pennsylvania's Firearms Laws**

2 249. Pennsylvania, like the other states, also has a robust system of state firearms laws
 3 designed to keep the public safe and that would be undermined if the federal government's
 4 actions are allowed to stand. Section 6105 of the Pennsylvania's Firearms Act mandates that any
 5 person who has been convicted of certain enumerated offenses inside or outside of Pennsylvania
 6 "regardless of the length of sentence" or whose conduct meets certain specified criteria "shall
 7 not possess, use, control, sell, transfer or manufacture or obtain a license to possess, use, control,
 8 sell, transfer or manufacture a firearm in this Commonwealth." 18 Pa. C.S. § 6105(a). The
 9 definition of "firearm" in section 6105 "shall include" any weapons which are "designed to or
 10 may readily be converted to" expel any projectile by the action of an explosive or the frame or
 11 receiver of any such weapon. 18 Pa. C.S. § 6105(i). The "downloadable guns" that Defense
 12 Distributed promises to make available constitutes a "firearm" under this section of the Firearms
 13 Act because it is a weapon that is designed and, by 3D printing, "may readily be converted to"
 14 expel bullets by an explosive. *Id.* Depending on the underlying offense or criteria, violation of
 15 section 6105, by individuals who shall not possess, use, control, sell, transfer or manufacture
 16 such a firearm in the Commonwealth is a second degree felony or first or third degree
 17 misdemeanor. 18 Pa. C.S. § 6105(a)(1). Each firearm wrongly possessed by a felon constitutes
 18 a separate offense.

19 250. By law, the State Police "shall have the responsibility to administer the provisions
 20 of" Pennsylvania's Uniform Firearms Act, and are assigned certain specific duties thereunder.
 21 18 Pa. C.S. § 6111.1.(a), (b). Among these duties, the State Police must: (1) review criminal
 22 histories, delinquency histories, and mental health histories of potential firearms' purchasers or
 23 transferees; (2) make all reasonable efforts to identify the legal owner of any firearm confiscated
 24 or recovered by law enforcement; (3) establish a telephone number for inquires by licensed
 25 firearms manufacturer, importers, and dealers; and (4) provide information regarding the
 26 firearms laws and firearms safety. 18 Pa. C.S. § 6111.1.

1 251. Section 6106 of the Firearms Act mandates, with limited exceptions, that, outside
 2 of one's home or "fixed place of business," firearms may not be carried in the Commonwealth
 3 "without a valid and lawfully issued license." 18 Pa. C.S. § 6106(a). Violation of this section
 4 constitutes a third degree felony unless the unlawful carrier of the firearm is "eligible" to have a
 5 valid license, in which case the violation is a first degree misdemeanor. *Id.*

6 252. Under section 6109 of the Firearms Act, a "license to carry a firearm" is required
 7 to carry a concealed firearm "on or about one's person or in a vehicle throughout this
 8 Commonwealth." 18 Pa. C.S. § 6109(a). In order to apply for a concealed carry license, you
 9 must be "21 years of age or older" and the application itself must be "uniform throughout this
 10 Commonwealth" and only "on a form prescribed by the Pennsylvania State Police." 18 Pa. C.S.
 11 § 6109(b),(c). In filling out the application, the licensee must identify one of the following
 12 reasons for applying for a firearm license: "self-defense, employment, hunting and fishing, target
 13 shooting, gun collecting or another proper reason." 18 Pa. C.S. § 6109(c).

14 253. Applicants must also sign and date the following statement under penalty of
 15 perjury, certifying that they have "never been convicted of a crime that prohibits [them] from
 16 possessing or acquiring a firearm under Federal or State law," are "of sound mind," and "have
 17 never been committed to a mental institution." *Id.* Applicants must also authorize the relevant
 18 law enforcement officials to research all records necessary to verify the certification and promise
 19 to "promptly notify" them if they are issued a license but later "knowingly become ineligible to
 20 legally possess or acquire firearms." *Id.*

21 254. Then, before a license is issued, the sheriff must "conduct [an] investigation" of
 22 the applicant including an investigation of the applicant's "record of criminal conviction,"
 23 whether or not the applicant "is under indictment for or has ever been convicted of a crime
 24 punishable by imprisonment exceeding one year," and has a "character and reputation" such that
 25 the applicant "will not be likely to act in a manner dangerous to public safety." 18 Pa. C.S. §

1 6109(d). The sheriff must also “conduct a criminal background, juvenile delinquency and mental
 2 health check.” *Id*

3 255. As can be seen, these various requirements and background checks serve to keep
 4 Pennsylvanians safe by keeping guns out of the hands of those who should not have access to
 5 them. This system, however, will be effectively nullified if those ineligible to buy or possess
 6 firearms can avoid the legal prerequisites for lawful possession by simply printing an untraceable
 7 gun at home or elsewhere.

8 **19. Rhode Island’s Firearms Laws**

9 256. Rhode Island law establishes procedures for the lawful possession of firearms as
 10 well as certain restrictions regarding the manufacturing and possession of firearms. These
 11 procedures and restrictions are designed “to prevent criminals and certain other persons from
 12 acquiring firearms generally and handguns in particular without at the same time making unduly
 13 difficult such acquisition for other members of society.” *Gadomski v. Tavares*, 113 A.3d 387,
 14 298 (R.I. 2015) (quoting *State v. Storms*, 308 A.2d 463, 466 (R.I. 1973)).

15 257. In Rhode Island, with certain exceptions, “[n]o person shall, without a license or
 16 permit . . . carry a pistol or revolver in any vehicle or conveyance or on or about his or her person
 17 whether visible or concealed” R.I. Gen. Laws § 11-47-8.

18 258. The licensing authorities of any city or town in Rhode Island shall issue a license
 19 or permit to a person over the age of twenty-one (21) to carry a concealed firearm upon his or
 20 her person, provided the applicant has “good reason to fear an injury to his or her person or
 21 property or has any other proper reason for carrying a pistol or revolver, and that he or she is a
 22 suitable person to be so licensed.” R.I. Gen. Laws § 11-47-11(a). In such a case, the applicant
 23 must comply and satisfy certain qualifications. *See* R.I. Gen. Laws § 11-47-15. Furthermore, the
 24 Attorney General of Rhode Island “may issue a license or permit to any person twenty-one (21)
 25 years of age or over to carry a pistol or revolver, whether concealed or not, upon his or her person
 26 upon a proper showing of need” R.I. Gen. Laws § 11-47-18(a).

1 259. Rhode Island General Laws § 11-47-5(a) also provides that “[n]o person shall
 2 purchase, own, carry, transport, or have in his or her possession any firearm,” if that person has
 3 been convicted of a “crime of violence,” is a fugitive from justice, been convicted or pled nolo
 4 contendere to an offense punishable as a felony, or has been convicted or pled nolo contendere
 5 to certain other enumerated offenses. *See* R.I. Gen. Laws § 11-47-5(a)(4)(i)-(iv). In addition,
 6 “[n]o person shall purchase, carry, transport, or have in his or her possession any firearm” if that
 7 person is subject to a domestic abuse restraining order, *see* R.I. Gen. Laws § 11-47-5(b), nor
 8 shall any person subject to community confinement or subject to electronic surveillance or
 9 monitoring as a condition of parole “purchase, carry, transport, or have in his or her possession
 10 any firearm.” R.I. Gen. Laws § 11-47-5(c). Upon pleading nolo contendere or upon conviction
 11 of certain enumerated offenses, a defendant must “surrender all firearm(s) owned by the
 12 defendant, or in the defendant’s possession, care, custody, or control . . .” R.I. Gen. Laws
 13 § 11-47-5.3(a).

14 260. In addition to the above paragraph, Rhode Island law also provides that “[n]o
 15 person who is under guardianship or treatment or confinement by virtue of being a mental
 16 incompetent, or who has been adjudicated or is under treatment or confinement as a drug addict,
 17 shall purchase, own, carry, transport, or have in his or her possession or under his or her control
 18 any firearm.” R.I. Gen. Laws § 11-47-6.

19 261. A person, firm or corporation in Rhode Island may make and sell a machine gun
 20 or parts for the same only if issued a license by the Attorney General of Rhode Island. R.I. Gen.
 21 Laws § 11-47-19.

22 262. Rhode Island law also provides that “[n]o person shall change, alter, remove, or
 23 obliterate the name of the maker, model, manufacturer’s number . . . [or] other mark of
 24 identification on any firearm.” R.I. Gen. Laws § 11-47-24(a). Additionally, “[n]o person shall,
 25 absent recertification paperwork, knowingly receive, transport, or possess any firearm which has
 26 had the name of the maker or manufacturer’s serial number removed, altered, or obliterated, or

1 if there is no name of the maker, model, or manufacturer's number then any other mark of
 2 identification on any firearm." R.I. Gen. Laws § 11-47-24(b). Violation of these provisions is a
 3 felony. R.I. Gen. Laws § 11-27-24(g).

4 263. Rhode Island also recently enacted a so-called "red flag" law, which provides a
 5 procedure where a petition may be filed in a court of law "requesting an extreme risk protection
 6 order that shall enjoin the respondent from having in their possession, custody or control any
 7 firearms and shall further enjoin the respondent from purchasing, receiving or attempting to
 8 purchase or receive any firearms while the order is in effect." *See* R.I. Gen. Laws § 8-8.3-3.

9 264. The Rhode Island General Assembly has also introduced, but not yet passed,
 10 legislation that, if enacted, would prohibit the sale, transfer, purchase, or possession of ghost
 11 guns, firearms that cannot be detected by metal detectors, and any firearm produced by a 3D
 12 printing process. *See* R.I. Sen. Bill No. S2004 (Introduced Jan. 8, 2020). Violation of these
 13 provisions would be a felony. *See* R.I. Sen. Bill No. S2004; *see also* R.I. Gen. Laws 11-27-24.

14 265. The Final Rules effectively deregulating 3D-printable gun files obfuscate, hinder,
 15 and contravene Rhode Island law regarding the regulation of firearms. Persons currently
 16 prohibited from possessing firearms—or persons allowed to possess a firearm(s) after proper
 17 licensing, qualification, and/or medical review—will be able to circumvent and violate Rhode
 18 Island law by manufacturing such a weapon on a 3D printer. Moreover, by virtue of their
 19 production on a 3D printer, these weapons will be unmarked, without identifying marks, and
 20 untraceable in violation of Rhode Island law. Defendants' actions will cause irreparable injury
 21 to Rhode Island and its citizens if allowed to stand.

22 **20. Vermont's Firearms Laws**

23 266. Vermont also has a comprehensive statutory scheme for regulating the possession
 24 and sale of firearms.

25 267. Vermont prohibits certain persons from possessing firearms, including persons
 26 who have been convicted of a violent crime, persons who have been adjudicated to pose "an

1 extreme risk of causing harm to himself or herself or another person,” and persons under 21
 2 years of age who are not law enforcement officers, active or veteran members of the military, or
 3 who have not satisfactorily completed an approved hunter safety course and been approved by
 4 the state Commissioner of Fish and Wildlife. 13 Vt. Stat. Ann. §§ 4017, 4020, 4053. Moreover,
 5 a person in Vermont who is adjudicated to be in need of treatment, under the State’s mental
 6 health laws, is barred by federal law from possessing a firearm. *See* 13 Vt. Stat. Ann., tit. 13, §
 7 4824; tit. 18, § 7617a; 18 U.S.C. § 922(g)(4). A mental health based prohibition on firearm
 8 ownership cannot be removed absent a judicial ruling that the person is no longer in need of
 9 treatment under Vermont law. *See* Vt. Stat. Ann., tit. 13, § 4825. And courts in Vermont routinely
 10 impose prohibitions on firearm ownership as conditions of probation for released adult and
 11 juvenile offenders. *See* Vt. Stat. Ann., tit. 28, § 252(b)(8); tit. 33, § 5262(b)(4).

12 268. Vermont recently enacted a universal background check system which requires
 13 nearly all firearm transfers to be facilitated by a licensed firearms dealer who must determine
 14 that the proposed transferee is not prohibited by state or federal law from possessing a firearm.
 15 Vt. Stat. Ann., tit. 13, § 4019.

16 269. Vermont law also authorizes law enforcement officers to remove any firearms in
 17 the immediate possession or control of a person being arrested or cited for domestic assault if
 18 removal is necessary to protect the safety of the officer, the alleged victim, the arrestee, or a
 19 family member of the arrestee or alleged victim. 13 Vt. Stat. Ann., tit. 13, § 1048.

20 270. Vermont law also imposes significant record-keeping requirements related to the
 21 transfer of firearms. Firearms retailers are required to “record the sale . . . of all revolvers and
 22 pistols, and the purchase by them of all secondhand revolvers and pistols . . . [which] shall
 23 include the date of the transaction, the marks of identification of the firearm, including the
 24 manufacturer’s name, the caliber, model and manufacturer’s number of the firearm.” Vt. Stat.
 25 Ann., tit. 13 § 4006. These records must be preserved for six years and made available for
 26 inspection by “all enforcement officers to inspect the same at all reasonable times.” *Id.*

1 271. These laws were enacted to protect the people of Vermont by keeping deadly
 2 weapons out of the hands of persons who are most likely to use them to cause others harm and
 3 to facilitate law enforcement investigations into gun-related crime. The Final Rules will cause
 4 Vermont irreparable harm by undermining the State of Vermont's ability to enforce these laws
 5 and protect its residents.

6 **21. Virginia's Firearms Laws**

7 272. While Virginia's system of firearm regulation is not as comprehensive as that of
 8 some of her sister states, even Virginia's regulatory framework would be compromised under
 9 the Government's position. There are entire categories of persons that Virginia has determined
 10 are prohibited from possessing various firearms. These categories would be obviated if the Final
 11 Rules effectively deregulate 3D-printable gun files.

12 273. For example, it is a violation of Virginia law for any person who has been
 13 acquitted on a charge of any felony and certain misdemeanors and ordinances by reason of
 14 insanity and committed to the custody of the Commissioner of Behavioral Health and
 15 Developmental Services to purchase, possess, or transport any firearm. Va. Code § 18.2-308.1:1.
 16 Such an individual may never again possess a firearm unless he successfully petitions the court
 17 for the restoration of that right. *Id.* Similarly, it is unlawful for any person who has been
 18 adjudicated incapacitated from purchasing, possessing, or transporting a firearm. Va. Code
 19 § 18.2-308.1:2. Again, such an individual may never again possess a firearm unless he
 20 successfully petitions the court for the restoration of that right. *Id.* It is unlawful for any person
 21 who has been involuntarily admitted to a facility or ordered to mandatory outpatient treatment
 22 for a myriad of reasons from ever again purchasing, possessing, or transporting a firearm unless
 23 he successfully petitions the court for the restoration of that right. Va. Code § 18.2-308.1:3.

24 274. Nor is mental acuity the only basis for restricting firearm possession. Virginia
 25 prohibits those persons convicted of felonies, certain misdemeanors, and those adjudicated
 26 delinquent of certain offenses from knowingly and intentionally possessing or transporting any

1 firearm. Va. Code § 18.2-308.2. With limited exceptions, these are lifetime bans unless one
 2 successfully petitions the court for restoration of that right. *Id.*

3 275. There are other, more limited circumstances in which firearm possession is
 4 restricted, but the context of these circumstances demonstrates the importance of ensuring that
 5 certain individuals do not have access to firearms. Individuals subject to protective orders may
 6 not transport firearms. Va. Code § 18.2-308.1:4. Perhaps most importantly, those subject to
 7 protective orders arising from family abuse may not even possess a firearm while the order is in
 8 effect. *Id.* Further, those convicted of two misdemeanor drug possession offenses within
 9 36 months are prohibited from transporting handguns until they complete a conviction-free
 10 period of five years. Va. Code § 18.2-0308.1:5. It is also unlawful, and subject to an enhanced
 11 penalty, to be in possession of a firearm while simultaneously in unlawful possession of a
 12 controlled substance. Va. Code § 18.2-308.4.

13 276. In addition to possession, Virginia also prohibits an individual from bartering,
 14 giving, or furnishing a firearm to those whom he knows are prohibited from possessing or
 15 transporting a firearm. Va. Code § 18.2-308.2:1. Likewise, Virginia prohibits individuals from
 16 furnishing handguns to minors. Va. Code § 18.2-309(B). These statutes evidence Virginia's
 17 public policy of ensuring that others not facilitate prohibited persons from obtaining firearms
 18 that they may not lawfully possess. The authorized release of Firearm Files under the Final Rules
 19 at issue runs completely contrary to that public policy.

20 277. Restrictions also exist on the types of firearms allowable in Virginia. Of particular
 21 relevance is the restriction against the manufacture, transfer, possession, or transportation of
 22 plastic firearms. Va. Code § 18.2-308.5. "A 'plastic firearm' means any firearm . . . containing
 23 less than 3.7 ounces of electromagnetically detectable metal in the barrel, slide, cylinder, frame
 24 or receiver of which, when subjected to inspection by X-ray machines commonly used at
 25 airports, does not generate an image that accurately depicts its shape." *Id.*

278. If the Final Rules go into effect, the Commonwealth of Virginia—home to such national security institutions as the Pentagon, the headquarters of the Central Intelligence Agency, and the Norfolk Naval Base—will be irreparably harmed, as firearms manufactured from Firearm Files will upend Virginia’s public safety regime. Those prohibited from possessing and transporting firearms will be able to manufacture their own untraceable guns with no accountability in short order.

V. CAUSES OF ACTION

Count I

Violation of the Administrative Procedure Act: Agency Action Not in Accordance with Law—Notice and Comment

279. All of the foregoing allegations are repeated and realleged as though fully set forth herein.

280. Under the APA, a court must set aside agency action that is “not in accordance with law.” 5 U.S.C. § 706(2)(A).

281. The APA requires federal agencies engaged in rulemaking to comply with notice-and-comment procedures. 5 U.S.C. § 553(b). Among other things, agencies must publish notices of proposed rulemaking describing “either the terms or substance of the proposed rule or a description of the subjects and issues involved.” 5 U.S.C. § 553(b)(3).

282. To comply with the APA, NPRMs must give fair notice of the proposed rules' effects. That is, they must permit interested members of the public to read the proposed rules and understand their essential attributes, without having to "guess" at the agency's "true intent." *State of California ex rel. Lockyer v. F.E.R.C.*, 329 F.3d 700, 707 (9th Cir. 2003).

283. Following publication of adequate notice, agencies must then give interested persons at least 30 days to comment on the proposed rule. "A decision made without adequate notice and comment is arbitrary or an abuse of discretion." *NRDC v. U.S. EPA*, 279 F.3d 1180, 1186 (9th Cir. 2002).

1 284. Defendants failed to give adequate notice of the import of their proposed rules.
 2 Although the Final Rules are contemplated by the Settlement Agreement with Defense
 3 Distributed promising to deregulate Firearm Files, the NPRMs make no mention whatsoever of
 4 3D-printable gun files.

5 285. The NPRMs not only failed to apprise interested persons of the “essential
 6 attributes” of the proposed rules—i.e., the effective deregulation of 3D-printable gun files—they
 7 *actively concealed* that such deregulation was the agencies’ “true intent.” The NPRMs
 8 misleadingly claim that the rules will only affect commonly commercially available items,
 9 without mentioning undetectable and untraceable weapons. And, contrary to the clear
 10 deregulatory purpose and effect of the proposed rules, the Commerce Department’s NPRM
 11 misleadingly claims that “[t]his proposed rule does not deregulate the transferred items.”

12 286. Moreover, the government failed to provide notice of the Commerce Final Rule’s
 13 modification of the self-executing loophole, creating an exception to the exception that retains
 14 jurisdiction only over certain published Firearm Files “made available by posting on the internet
 15 . . .” Thus, even commenters who realized the proposed rules would affect Firearm Files had
 16 no notice of the specific provisions revealed for the first time in the Commerce Final Rule,
 17 depriving them of any opportunity to comment on the significant loopholes in that regulatory
 18 scheme, including those discussed above.

19 287. The Final Rules are not a logical outgrowth of the rulemaking process because
 20 the public did not receive fair notice of their terms or substance through the proposed rules. A
 21 new round of notice and comment “would provide the first opportunity for interested parties to
 22 offer comments that could persuade the agency to modify its rule.” *Nat. Res. Def. Council v. U.S.*
 23 *Nuclear Regulatory Comm’n*, 279 F.3d 1180, 1186 (9th Cir. 2002).

24 288. For these reasons, the Plaintiff States are entitled to a declaration that the Final
 25 Rules are invalid, and an injunction prohibiting them from going into effect. Absent such relief,
 26 the Plaintiff States and their residents will continue to be harmed by Defendants’ illegal actions.

Count II

Violation of the Administrative Procedure Act: Agency Action Not in Accordance with Law—AECA

289. All of the foregoing allegations are repeated and realleged as though fully set forth herein.

290. “In order to be valid regulations must be consistent with the statute under which they are promulgated.”” *E. Bay Sanctuary Covenant v. Trump*, 932 F.3d 742, 772 (9th Cir. 2018) (brackets omitted) (quoting *United States v. Larionoff*, 413 U.S. 864, 873 (1977)). Regulations “inconsistent with the statutory mandate or that frustrate the policy that Congress sought to implement” are invalid. *F.E.C. v. Democratic Senatorial Campaign Comm.*, 454 U.S. 27, 32 (1981).

291. AECA's purpose is to control the import and export of defense articles and defense services “[i]n furtherance of world peace and the security and foreign policy of the United States[.]” 22 U.S.C. § 2778(a)(1). This includes reducing the international trade in arms and avoiding destabilizing effects abroad through arms exports. *Id.* § 2751.

292. The State Final Rule is contrary to the purpose of AECA because its removal of Firearm Files from the Munitions List is not “[i]n furtherance of world peace and the security and foreign policy of the United States[.]” In fact, it frustrates these objectives by giving up State Department control of Firearm Files that can be used to automatically produce untraceable, undetectable firearms, and transferring control of these items to the Commerce Department, which will not retain meaningful export-control jurisdiction over such files. As the record reflects, and as the federal government apparently agrees, global dissemination of untraceable and undetectable firearms will actively jeopardize world peace and the security and foreign policy of the United States.

293. As this Court has instructed, it is insufficient for the State Department to remove Firearm Files from the Munitions List while evaluating the issue "only through the prism of

1 whether restricting foreign access would provide the United States with a military or intelligence
 2 advantage.” *Washington*, 2019 WL 5892505, at *8. But, yet again, the State Department’s sole
 3 basis for removing Firearm Files from the Munitions List is that they “do not confer a critical
 4 military or intelligence advantage and are not inherently military based on their function.” 85
 5 Fed. Reg. 3823. Its assertion that national security and foreign policy interests are adequately
 6 addressed by the Commerce Rule rings hollow, since the Commerce Department lacks any
 7 meaningful authority to regulate Firearm Files.

8 294. For these reasons, the Plaintiff States are entitled to a declaration that the Final
 9 Rules are invalid, and an injunction prohibiting them from going into effect. Absent such relief,
 10 the Plaintiff States and their residents will continue to be harmed by Defendants’ illegal actions.

11 **Count III**

12 **Violation of the Administrative Procedure Act:
 Arbitrary and Capricious Agency Action**

13 295. All of the foregoing allegations are repeated and realleged as though fully set
 14 forth herein.

15 296. Under the APA, a court must “set aside agency action” that is “arbitrary,
 16 capricious, an abuse of discretion, or otherwise not in accordance with law,” 5 U.S.C.
 17 § 706(2)(A).

18 297. Agency action is arbitrary and capricious where, *inter alia*, the agency has (1)
 19 “relied on factors which Congress has not intended it to consider,” (2) “entirely failed to consider
 20 an important aspect of the problem,” (3) “offered an explanation for its decision that runs counter
 21 to the evidence before the agency,” or (4) “is so implausible that it could not be ascribed to a
 22 difference in view or the product of agency expertise.” *Motor Vehicle Mfrs. Ass’n of U.S., Inc.*
 23 v. *State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983). Where an agency reverses a prior
 24 policy, it must (1) “display awareness that it *is* changing position,” (2) “show that there are good
 25 reasons for the new policy,” including disclosing the details of any “factual findings that

1 contradict those which underlay its prior policy,” and (3) account for “serious reliance interests”
 2 engendered by the prior policy. *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009).

3 298. The Final Rules are an outgrowth of the same arbitrary and capricious agency
 4 decisionmaking process that gave rise to the NPRMs and the unlawful Temporary Modification
 5 and Letter, and do not reflect considered agency decisionmaking.

6 299. The Final Rules are an illogical means of achieving the federal government’s
 7 stated goal of continuing to regulate the export and internet publication of Firearm Files. Even
 8 though the preambles of both Final Rules acknowledge that the global dissemination of Firearm
 9 Files will harm national security and foreign policy interests, the combined effect of the Final
 10 Rules is to permit such dissemination and ensure that the Commerce Department lacks
 11 jurisdiction to control it.

12 300. The Commerce Final Rule is arbitrary and capricious because it contains glaring
 13 loopholes that will permit Firearm Files to be exported and disseminated easily without a license.
 14 In general, the Commerce Department lacks jurisdiction over “published” items. 15 C.F.R.
 15 §§ 734.3(b)(3), 734.7. Defense Distributed has already published at least some of its Firearm
 16 Files, including the files for the Liberator pistol. Firearm Files could also be easily published by,
 17 for example, distributing them at a publicly accessible “conference, meeting, seminar, trade
 18 show, or exhibition,” or allowing members of the public to obtain copies from a “public
 19 collection,” among other means of publication. 15 C.F.R. § 734.7. Under the Final Rules, such
 20 published files remain largely outside the Commerce Department’s export jurisdiction.

21 301. The Commerce Final Rule purports to create an exception whereby Commerce
 22 retains jurisdiction over published files “made available by posting on the internet in an
 23 electronic format, such as AMF or G-code, and [that are] ready for insertion into . . . equipment”
 24 that uses the files to “produce the firearm frame or receiver or complete firearm.” However, this
 25 limited retention of jurisdiction is essentially meaningless in light of glaring loopholes that make
 26 it easy to evade. *See supra ¶¶ 102–111*. For example, Commerce will lack jurisdiction over the

1 export of published files by any means *other* than “posting on the internet,” including direct
 2 transmission to foreign recipients by mail or email. Once Firearm Files are exported lawfully,
 3 they can be posted on the internet, making them broadly available worldwide. Commerce will
 4 also lack jurisdiction over files that are not “ready for insertion” into a 3D-printer or other device,
 5 but that can be easily converted to a readable format—such as CAD files that can be converted
 6 using commonly available software.

7 302. Moreover, transferring Firearm Files to the Commerce Department’s jurisdiction
 8 removes them from Congressional oversight and vests the Department with effectively
 9 unreviewable discretion to grant licenses to post Firearm Files on the internet, where they could
 10 be accessed by anyone throughout the world with no restrictions on the end-use or end-user.

11 303. The Final Rules are also arbitrary and capricious because they infringe on the
 12 Plaintiff States’ sovereign rights to exercise their police power by enacting and enforcing public
 13 safety laws that restrict certain persons’ possession of firearms and provide for licensing and
 14 tracking gun ownership.

15 304. For these reasons, the Plaintiff States are entitled to a declaration that the Final
 16 Rules are invalid, and that they are vacated and set aside. The Plaintiff States are also entitled to
 17 an injunction prohibiting the Final Rules from going into effect. Absent such relief, the Plaintiff
 18 States and their residents will continue to be harmed by Defendants’ illegal actions.

19 **VI. PRAYER FOR RELIEF**

20 WHEREFORE, the Plaintiff States request that the Court enter a judgment against
 21 Defendants and award the following relief:

22 a. Issue a preliminary and a permanent injunction prohibiting Defendants
 23 from implementing or enforcing the Final Rules;

24 b. Vacate and set aside the Final Rules;

25 c. Award the Plaintiff States their costs and reasonable attorneys’ fees; and

26 d. Award such additional relief as the interests of justice may require.

DATED this 23rd day of January, 2020.

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26 **PRO HAC VICE APPLICATION*
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